

# INDIAN WOMEN : MARRIAGE AND SOCIAL STATUS

*(Report of the Age of Consent Committee)  
1928-1929*



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**REPORT**  
**OF THE**  
**AGE OF CONSENT**  
**COMMITTEE**

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**1928-1929**



CALCUTTA: GOVERNMENT OF INDIA  
CENTRAL PUBLICATION BRANCH  
1929

NOTE.

The cost of this Committee, including the cost of printing the report, the appendices and the evidence estimated to have been Rs. 2,88,614.

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# REPORT OF THE AGE OF CONSENT COMMITTEE 1928-29.

## CHAPTER I.

### INTRODUCTORY.

1. *Appointment and personnel of the Committee.*—The Committee on the Age of Consent was appointed by the Government of India on the 25th June 1928 consisting of a Chairman and 5 Members; 4 Members of the Legislative Assembly were subsequently added on the 25th September. The Committee as finally constituted consists of the following members :—

#### *Chairman.*

1. Sir Moropant Vishwanath Joshi, B.A., LL.B., Kt., K.C.I.E., late Home Member of the Executive Council of the Governor of the Central Provinces.

#### *Members.*

2. Rai Bahadur Pandit Kanhaiya Lal, M.A., LL.B., late Judge of the Allahabad High Court (Vice-Chairman).
3. Mr. A. Ramaswami Mudaliyar, B.A., B.L., lately a Member of the Madras Legislative Council (Now President, Corporation of Madras).
4. Khan Bahadur Mahbub Mian Imam Baksh Kadri, B.A., LL.B., O.B.E., lately a District and Sessions Judge in the Bombay Presidency, and now Chief Judicial Officer of the Junagadh State.

5. Mrs. M. O'Brien Beadon, M.B., B.S. (L.S.A., Superintendent, Victoria Government Hospital, Madras.
6. Mrs. Brij Lal Nehru.
7. Mr. Satyendra Chandra Mitra, M.A., B.L., M. Advocate, High Court, Calcutta.
8. Pandit Thakur Das Bhargava, M.A., L. M.L.A., Advocate, High Court, L. (Hissar).
9. Maulvi Muhammad Yakub, M.L.A., Deputy F. dent, Legislative Assembly.
10. Mian Mohammad Shah Nawaz, Bar.-at-L. M.L.A., Lahore.

With Mr. M. D. Sagane, M.A., LL.B., of Central Provinces Civil Service, as Secreta

2. *Terms of reference.*—The terms of reference were

- (1) to examine the state of the law relating to the of Consent as contained in Sections 375 and of the Indian Penal Code, specially with reg to its suitability to conditions in India;
- (2) to enquire into the effect of the amendments m by the Indian Penal Code (Amendment) 1925 (XXIX of 1925); and to report whet any further amendment of the law is necess. and if so, what changes are necessary as rega offences (a) without and (b) within the mari state.

3. The Committee met at Simla on the 30th June 192 and after settling the questionnaire and the details co nected with the tour, adjourned on the 12th July.

4. *Procedure adopted for obtaining opinions.*—Th questionnaire of the Committee (Appendix I) was sent o directly to about 6,000 persons and to 1,930 more throug the various local Governments, of whom about 1,200 r sponded. The response to the questionnaire was wide ar general, indicating the great interest evinced in the que tion and the importance attached to it by the public i every Province. The number of persons who participate in the enquiry was, however, much larger than this figur would indicate, as several of the statements received re

presented the views, not merely of individuals, but of larger bodies like Organisations, Associations and Corporations.

5. *Itinerary of the Committee.*—About 900 written statements were received by the end of August 1928, and the rest within the extension of time granted later. In the beginning of September, the Committee started the examination of witnesses at Simla and took advantage of the session of both the Chambers of the Central Legislature to examine such of the members as could spare time, amid their other engagements, to attend and give evidence before the Committee. On the 15th September the Committee started on tour, and in the course of its itinerary visited and recorded evidence at Lahore, Peshawar, Karachi, Delhi, Ahmedabad, Bombay, Poona, Ootacamund, Calicut, Madras, Madura, Vizagapatam, Dacca, Shillong, Calcutta, Patna, Benares, Allahabad, Lucknow and Nagpur. The Committee examined about 400 witnesses of different classes and shades of opinions, including medical men and women, social workers, leading representatives of different classes and communities, and exponents of both orthodox and advanced opinions.

6. *Lady witnesses and Purdah parties.*—The Committee examined a large number of lady witnesses in different parts of the country, whose intimate knowledge of the conditions of married life and maternity entitled them to speak with authority of the feelings and views of at least the educated section of women in the country. To ascertain the opinions of orthodox women unable to appear and give evidence before the Committee, Purdah parties were organized at some places which the lady members of the Committee attended; and meetings of ladies of different shades of opinions were addressed by a lady member of the Committee in Peshawar, Karachi, Ahmedabad, Bombay, Poona, Madras, Calicut and Madura and other places, to afford occasion for an exchange of views and to create a general interest in the work of the Committee.

7. *Visits to villages and institutions.*—Feeling the necessity of ascertaining at first hand the opinions of villagers, the Committee took the opportunity of visiting the following villages:—

Aslali and Jaitalpur near Ahmedabad in the Bombay Presidency, Appantirupati and Kalandiri near

Madura in the Madras Presidency, Harirampur and Mirpur near Dacca in Bengal, Phulwari and Bushera-Dinapore near Patna in Bihar and Orissa and Gosainganj near Lucknow in the United Provinces.

In every village visited, enquiries were made from the people there as to the practices prevalent among them in regard to marriage and consummation, the evils, if any, noticed by them and the remedy proposed. Lady members made similar enquiries separately from the women gathered there. The alacrity with which in certain villages the villagers expressed their willingness for legislation to prevent early maternity was a surprise to the Committee. The evidence of lady doctors examined at different places has been of particular value and induced the Committee to visit various Maternity Homes at Karachi, Ahmedabad Bombay, Poona and Madras, and certain Rescue Homes Orphanages and Children's Aid Societies at Ahmedabad Bombay, Calicut, Benares and elsewhere. The Committee also visited two chawls in Bombay and various girls and boys' schools in different parts of the country, to see the girls and boys, married and unmarried, and their physical condition. The scope of the Committee's enquiry was, therefore, much larger than the mere volume of oral and written evidence would indicate.

8. The questionnaire of the Committee was sent to important newspapers published in the various languages of the country and its publication in most of them afforded an opportunity for the public in general to express their views. Every opportunity was also afforded during the itinerary to all persons, interested in the question to send their considered opinions on the various points, mentioned in the questionnaire; and in many instances, persons, who had not sent written opinions for want of time or other reasons, were invited to give evidence before the Committee and among them there were many learned representatives of orthodox opinion and several representatives of what are described as the depressed classes, whose opinions would not have otherwise been available to the Committee. The Committee did not visit Burma, because early consummation of marriage was uncommon in that province, though cases of rape or attempted rape were far more numerous than in any other Province. The Burma Government also

thought that no special enquiry by the Committee in Burma was necessary. The Committee, nevertheless, took the opportunity to issue its questionnaire to various leading men and associations in Burma, and has had the advantage of receiving a few opinions for its consideration.

9. The Committee has also had the benefit of the views of various Social Reform and Religious Associations in the Country and of the resolutions passed at meetings and conferences, including the conferences of ladies held in various places and the conference of the All-India Medical Association held in Calcutta in 1928. It has also received valuable assistance from the Public Health Departments and the Doctors in charge of Maternity Homes in different centres visited by it.

10. About 400 persons came and were examined out of those invited for oral examination. Amongst these there were about 60 Muslim witnesses, including 3 ladies. Some of those examined had not given written opinions; but for various reasons it was considered desirable to take their oral statements.

11. *General nature of evidence. Non-Muslim evidence.*—The non-Muslim witnesses may be divided into two classes :—

1. Progressives—

(a) in favour of advance mainly by legislation.

(b) in favour of advance by social propaganda only and not by legislation.

2. Conservatives who are against any advance, by legislation or otherwise.

The progressives, who are for an advance on the present law, may be divided into those, who advocate a law fixing the minimum age of marriage and do not care for a law of Consent, those who advocate both and those who rely merely on the increase in the age of Consent. The last sincerely believe that the increase in age, with a wide amount of publicity, would secure the object in view by voluntary or involuntary compliance with the law. It may, however, be pointed out that among those, who would accept only an increase in the age of Consent, there are some, who obviously feel that such a law has been a dead letter and must continue to be so. and whose acceptance is thus only to avoid what they conceive to be the more positive

evil, namely, a law fixing the minimum age of marriage. From the evidence it appears that there is a large volume of opinion in favour of progress; but this does not make the Committee oblivious to the fact that there is an important section of orthodox opinion, which is opposed to change on the ground of Shastric injunctions, or more properly, of custom modifying such injunctions. The Committee has taken care to have the views of this latter class on record; and the paucity of their numbers has not prevented the Committee from giving due weight to their opinions. The Committee, however, notes that although efforts to get the opinions of orthodox ladies by direct evidence were made, they were not very successful; and the Committee had to content itself with second-hand information from those, who were in touch with their opinions.

12. *Muslim evidence*.—The Muslim witnesses may be ranged under 3 classes :—

- (a) Those who hold that early marriage is no evil whatever; that it has no prejudicial effect either on the mother or her progeny; that it is permitted by the Muslim Law and is sanctioned by the practice of the Holy Prophet and other eminent personages; and that any legislation fixing a minimum age of marriage would be an interference with Islam.
- (b) Those who hold that though early marriage is to a certain extent an evil, as shown by the medical evidence, it is not such a great evil as to justify an interference on the part of the Government, the more so when it is found that due to economic causes, the spread of education and the progress of social reform, the age of marriage is automatically rising.
- (c) The third class of witnesses comprise those who hold early marriage to be a positive evil, ruinous to the health and progress of the community and against the principles and teachings of Islam. They would not rely merely upon social reform and progress of education but think that a bold step by legislation is necessary in the best interests of the community and the nation. They do not agree with the Moulavis



and Ulemas who think that marriage legislation or raising the age of Consent would be an interference with the principles and teachings of Islam.

13. *Views of Muslim theologians.*—It has been pointed out that very few Muslim witnesses and theologians have appeared before the Committee. The questionnaire was sent to every Muslim gentleman, whose name was suggested by any member of the Committee; and a special request was conveyed to some prominent Muslim theologians to give evidence before the Committee or to send their written statements. At the end of the tour the Committee re-assembled at Delhi; and a second opportunity was given to the witnesses whose evidence, some of the members considered, it was highly desirable to obtain. But in spite of this, the response was meagre. This is regrettable; but though the opportunity to give evidence was not largely availed of by orthodox Muslims, we feel that all that could be stated from the theological point of view has been stated by the witnesses of various schools of thought, who have assisted us in our enquiry, and it is extremely doubtful, if any fresh light can be thrown by them on the subjects under consideration.

14. Members of the Committee, who have the advantage of knowing Sanskrit, have also examined the texts cited by witnesses, and opinions expressed in pamphlets written by Pandits and scholars qualified to speak on the interpretation of Shastric texts; and others, who know Arabic, have gone through the Islamic texts referred to by witnesses. Several other documents, statistics and reports bearing on the question, including those on the Age of Consent and Marriage in other countries, have been collected and duly considered.

15. After completing the evidence, the Committee adjourned again on the 29th January and reassembled at Mussoorie on the 20th April to discuss the several points involved and to frame a Report.

16. *Two remedies: Law of Consent and fixing a minimum age of marriage.*—The terms of reference to this Committee do not directly include the question of prohibiting or penalising child marriages. But, among other things, the Committee had to consider how far the existing law of the Age of Consent within the marital state was

effective in its operation and whether any remedy could be suggested to make it more effective. It was impossible to debar the witnesses from suggesting the latter as a better and more effective remedy to check the evil intended to be dealt with by the law of the Age of Consent, if they thought fit to do so. The object of the Age of Consent within marital relations is to protect tender girls against early cohabitation and early maternity; and if the witnesses considered the mere law of Age of Consent as ineffectual in attaining the desired object, it was open to them to say so and suggest what they considered the better remedy, *viz.* fixing the minimum age of marriage. The witnesses have freely availed themselves of this opportunity and have declared by a very large majority that they would prefer the latter remedy. Moreover, objections to raising the age of Consent were partly based on the ground of Shastri injunctions; that was a ground common to both—raising the age of Consent and fixing a minimum age of marriage. Texts were quoted to prove both—that pre-pubertal marriages were enjoined and consummation soon after puberty was also enjoined by the Shastras. This also necessitated a consideration by the Committee as to the extent to which the texts are looked upon as authoritative in either case.

17. *Why Law of Marriage considered.*—When the law of the Age of Consent alone was contemplated by its promoters as a remedy for protecting tender girls, it might possibly have been out of place to consider any other remedies; at present, however, Bills suggesting both the remedies are before the Legislature; and it is impossible to avoid the consideration of what might be looked upon as a direct attack by way of fixing a minimum age of Marriage rather than a mere flank attack by raising the age of Consent. The Legislative Assembly has postponed the consideration of Rai Sahib Harbilas Sarda's Bill pending the Report of this Committee. This has made it not merely relevant but almost incumbent on this Committee to express an opinion as to the relative efficacy of the remedy suggested in the Bill.

## CHAPTER II.

HISTORY OF LEGISLATION REGARDING THE AGE OF CONSENT  
AND MARRIAGE.

18. *Ancient Law of Consent.*—The offence of rape is one of the most heinous of offences according to all ancient law-givers. The Code of Manu condemns the ravishment of a woman and prescribes punishments which vary from the sentence of death to a fine according to the relative status of the offender and the victim. The Muslim Law equally sternly condemns it, the punishment ranging from stoning to death to the infliction of 100 stripes.

19. At the time of the British occupation, the Muslim Law was being generally administered and courts set up by the East India Company adopted and administered that law. The Presidency towns, however, were guided by the Common Law of England from time to time. In 1828 an Act for improving the administration of criminal justice in the East Indies was passed (9 George IV C. 74) and was made applicable by His Majesty's Courts of Justice to the towns of Calcutta, Madras and Bombay. This Statute declared rape an offence punishable with death, provided the girl was below 8 years, and with imprisonment in other cases. The mofussil courts however continued to administer the Muslim Law except in the Bombay Presidency, where by Regulation XIV of 1827 the Criminal Law applicable to that Province was defined.

20. *Marital rape and age limit.*—It may be noted that in all these laws, ancient and modern, there was no provision, prohibiting the intercourse of a man with his wife, on the basis of age. The concept, however, cannot be stated to be novel to the ancient law-givers, as both under Hindu Shastras and Muslim texts, consummation of marriage before the girl attained puberty was forbidden. The Law Commissioners, who drafted the Indian Penal Code in 1846, appear to have first conceived the idea of making intercourse between husband and wife, below a given age, an offence. The Indian Penal Code enacted in 1860 included the offence under rape, and prescribed a punishment which might extend to transportation for life for the husband who consummated the marriage, when his wife was below 10 years of age.

21. *Legislation in 1891.*—The law stood thus for thirty years, when owing to a number of cases in Bengal, the most notable of which was that of Haree Mohan Mythe the attention of the public and the Government was drawn to the deficiency of the law; and it was proposed to raise the age from 10 to 12 years. Sir Andrew Scoble, who introduced the bill in 1891, claimed it as “the right and duty of the State to interfere for the protection of a class of its subjects, where a proved necessity existed. The object of the bill was frankly humanitarian, *viz.*, “to protect female children from immature prostitution and from premature cohabitation.” These practices cause immense suffering and sometimes even death to the girl and generally resulted in injury to her health and that of her progeny. It is unnecessary to enter into the history of the agitation that followed, or describe the firm stand which a section of the educated public and the Government took on the bill. It will be sufficient to state that the arguments, advanced against and in support of the measure at the time, have since been in the main repeated on every occasion, when similar legislation has been attempted.

22. Towards the end of the last decade, public attention began to be increasingly directed towards the improvement of the physique of the nation and the reduction of causes, which contributed to abnormal mortality. The great European war had proved the need for a more healthy and sturdy race. Political ideas and aspirations, which were stirring the country, also led people to consider the questions more seriously. The growing consciousness of the people to the magnitude of the evil led to the realisation that legislation to remove some of the causes, which were sapping the vitality of the people, should be undertaken. The need for extended legislatures and greater political power was pressed on the attention of the illustrious authors of the Montagu-Chelmsford report, and some individuals and associations, with the additional object of securing such legislation. The same point of view was put forward by some Indian witnesses before the Joint Parliamentary Committee which considered the Government of India Bill.

23. *Bill of 1922.*—The chances of such legislation being successfully carried through the reformed Legislature were

considerably enhanced by the Government of India Act of 1919, and it is small wonder that the very earliest opportunity was taken to secure such legislation by some of the members of the Indian Legislative Assembly. On the 18th February 1922, Rai Bahadur Bakshi Sohanlal, M.L.A., moved for leave to introduce a bill in the Assembly to amend Section 375, Indian Penal Code, by raising the age of Consent in both marital and extra-marital cases. The Assembly at a later date carried a motion to circulate the bill for the purpose of eliciting public opinion thereon. The circulation of the bill elicited opinions from various Provincial Governments, which are highly interesting and instructive. The Government of Bihar and Orissa was against the bill and referred to the distinct risk of agitation and discontent in forcing social reform in advance of public opinion. The Government of the Central Provinces and Berar thought that the law would be evaded and was of opinion that education and moral teaching would better serve the purpose. The Bengal Government had great sympathy with the object of the bill but found that the majority of the people consulted were against it. The Government of Madras declined to express any strong opinion either way. The Bombay Government strongly favoured the bill, and thought that the preponderance of public opinion was in agreement with the measure. The United Provinces Government welcomed the proposal and was of opinion that it could be safely adopted. The Government of the Punjab was inclined to leave it to Indian opinion and thought that the Government ought to be neutral. The Government of Assam, while strongly supporting the measure, expressed the earnest hope that the Government would not officially dissociate itself from the measure.

24. *Attitude of Government in 1922.*—On the 25th September 1922, the author of the bill moved that it be referred to a Select Committee. The motion was negatived by 41 votes to 29, the Government remaining neutral. Sir William Vincent, the Home Member, had, however, declared in the course of the discussion that "if the bill did go to a Select Committee, it could only go on the distinct condition that the section did not apply to marital relations, and that in the case of girls over 12 and under 14 the punishment should be materially reduced and placed on a somewhat similar level to that which obtained in

England". The first attempt at legislation thus proved abortive. But the question itself was not allowed to rest there; and with the passing of years the agitation for a modification of the law steadily grew. A better knowledge of the evil consequences of early marriage and early consummation began to spread in the country—Maternity and Child Welfare centres were established in various parts of the country and furnished greater opportunities for understanding the extent of the evil. Baby Shows and Child Welfare Exhibitions concentrated the attention of the public on these problems.

25. *Awakening among women.*—Meanwhile, new forces were beginning to assert themselves in the social and political life of the country. Some of the educated women began, almost for the first time in recent years, to take part in the public affairs of the country. In several Provinces they had received the franchise by the votes of the local Legislatures. One of the first questions that they turned their attention to was the condition of their sex and the means by which it should be improved. The number of such ladies was no doubt very small and cannot even now be said to bear any adequate proportion to their population. But they have exercised considerable influence in shaping such legislation.

26. *Dr. Gour's Bill of 1924.*—Early in the life of the second Legislative Assembly, Dr. Hari Singh Gour introduced a bill to amend Section 375, Indian Penal Code, on the same lines as the previous bill, raising the age to 14 years in both marital and extra-marital cases. The bill was referred to a Select Committee, which made a material alteration by reducing the age from 14 to 13 years in the case of an offence by the husband.

27. *Attitude of Government in 1924.*—The bill as amended, was taken up for consideration by the Assembly on the 19th March 1925; and it was clear from the start that opinion was very keenly divided on the provisions of the measure. The growth of public opinion in the interval between 1922-24 has already been referred to and is reflected in the proceedings of the House. An amendment, raising the age to 16 in extra-marital cases was carried by an overwhelming majority in spite of the strong opposition of the Government and in spite of their votes being cast against it, the voting being 65 members for and 22 against it. Another amendment of a more

serious character, raising the age in marital cases to 14, and thus restoring the original provision of the bill in this behalf, was also carried by a narrow majority inspite of the serious opposition of the Government, 45 members of the Assembly voting for the amendment and 43 against it, among the latter being 18 official members. But these amendments were so different from what the Government then considered safe that they decided to oppose the final passage of the bill, and the motion that the amended bill be passed was negatived by 54 votes to 36, among the 54 being no less than 24 official members.

28. In view of the various suggestions regarding the Age of Consent law, which are examined later, it will not be unprofitable to briefly refer to some of the amendments considered and rejected by the Assembly in connection with the bill. An amendment that the distinction between girl-wives below 12, and above 12 but below 13, should be removed and that the husband in all cases should be subject to the maximum punishment of imprisonment for two years was negatived by the House without serious discussion. An amendment of exactly the opposite nature, suggesting that the punishment should be the same even where the girl is between 12 and 13 years of age, was also negatived. A proposal that, where the girl was between 12 and 13 years, the punishment for the husband should be confined to fine, was also rejected by the House. The question as to by whom prosecutions ought to be instituted came up for the serious consideration of the House, when Mr. Kamini Kumar Chanda moved that no complaint for rape upon a wife, who is over 12 years of age, should be instituted against a husband except by the person who would be the natural guardian of the girl if she were unmarried. The spokesman on behalf of the Government referred to the discussion on the subject in 1891, and the safeguards already provided, and objected to the amendment *in toto*. The House rejected the amendment by 56 votes to 32. Finally, however, as stated above, the bill was rejected.

29. *Amendment of 1925.*—But though the bill was rejected, the Government felt that matters could not end there, and that public opinion was fairly clear on the need for an advance. On the 1st of September 1925, Sir Alexander Muddiman introduced a bill to amend Section 375, Indian Penal Code, by fixing 14 as the age in extra-marital cases and 13 in marital cases. When the detailed

consideration of the bill was taken up, Dr. S. K. Datta moved that the age be increased to 14 years in marital cases, and Sir Hari Singh Gour proposed that a new offence be constituted when the age of the wife was above 13 and below 15 years. Both the amendments were, however, withdrawn on the assurance of the Home Member that he would obtain the opinions of the local Government and Administrations on these amendments. The bill, as introduced by the Home Member, was then passed by 8 votes to 11. It is again interesting to note some of the amendments, which were rejected by the Assembly. The proposal that the maximum punishment, in cases where the wife was above 12 years, should be 6 months' imprisonment and a further proposal that it should be only fine were both rejected by large majorities by the House, the Home Member remarking that the punishment proposed under either of these amendments was "ludicrously inadequate" and that "it was much better to reject the bill altogether than to make the punishment a farce".

30. *Dr. Gour's Bill of 1927.*—The question was not treated as having been finally settled by the Act of 1923 either by the Government or by the members of the Assembly. The former had expressly undertaken to get the opinions of local Governments on the bill of Sir Hari Singh Gour, and the latter by a majority had accepted it only as a step in the right direction. When the third Legislative Assembly met, Sir Hari Singh introduced his bill to amend Section 375 of the Indian Penal Code, raising the age of Consent in marital cases to 14 and in extra-marital cases to 16. In the course of the debate, the Government, while expressing general sympathy with the object of the bill, stated that detailed reports had been called for on the operation of the amended law of 1925 from the local Governments, and that the Government intended to appoint a strong Committee to undertake a comprehensive survey of the whole question with a view to taking further action, if the reports of the local Governments appeared to render such a course necessary. On this statement the motion to consider the bill was not pressed, and an amendment to circulate it for opinion was carried by the House.

31. This led to the appointment of the present Age of Consent Committee.

32. During the period reviewed above, opinion was gaining ground that a more effective step than the raising



of the age of Consent should be taken to eradicate the evil of early consummation. The prevention of early marriages came to be regarded as the remedy, par excellence, to achieve the end in view. Proposals to exclude from educational institutions boys below a certain age, who were already married, or at any rate to exclude such boys from sitting for particular examinations, were put forward by some prominent educationists and social workers in the hope, among others, that thereby the marriage age of girls would rise. In the course of time it was, however, realised that such measures were auxiliary and the main reform was to prohibit, under risk of penalty, the celebration of marriages of boys and girls below a prescribed age.

33. *History of Marriage Law.*—In 1924 Mr. Ranglal Jajodia, M.L.A., wanted to introduce a bill in the Legislative Assembly, penalising the marriage of boys below 16 years of age and had obtained the necessary preliminary sanction of His Excellency the Viceroy. But for some reason, not apparent, the bill was never introduced.

34. Others, however, were ready to undertake the task, and on the 1st February 1927, Rai Sahib Harbilas Sarda introduced a bill to restrain the solemnisation of child marriages among Hindus, by declaring such marriages invalid when either of the parties was below a prescribed age. The bill was circulated for opinion, and it was obvious that a very considerable section of the public was against the proposal to invalidate such marriages, both on legal and religious grounds. The bill was later referred to a Select Committee, which made such radical alterations in it that it was decided to republish the amended bill. The bill penalised husbands over 18, marrying girls below the age of 14. It also penalised the parents, guardians and priests, solemnising marriages of such girls, or of boys below 18 years of age. When the bill came up before the Assembly, it was remitted to the Select Committee. The Committee made some slight changes, not affecting the main provisions of the amended bill. It was made clear that a mere betrothal ceremony would not constitute a marriage within the meaning of the bill; and it exempted a female parent or guardian from the punishment of imprisonment. The bill is now pending before the Assembly, its further consideration having been postponed till the result of the present enquiry is published.

## CHAPTER III.

## THE LAW OF RAPE AS AMENDED IN 1925.

35. From 1891 to 1925, the age of Consent for girls in marital and extra-marital cases was the same, *viz.*, 12 years. The amendment of the law in 1925 for the first time introduced a distinction between marital and extra-marital cases and fixed the age of Consent in the former at 13 and in the latter at 14 years. In the course of its enquiry the Committee tried to investigate how far this amended law was known to or appreciated by the public and what its effects were. In 1927, the Government of India, in circularising to the local Governments the latest bill of Sir Hari Singh Gour, requested them to furnish information as regards the working of the amended law and its remedial effects.

36. *Opinions of local Governments on effects of amendment of 1925 and Dr. Gour's Bill of 1927.*—The Government of Bombay stated that no difficulties had been experienced in the working of the Act. But it was clearly of opinion that any attempt by legislation to prohibit the sexual intercourse of a husband with his wife until she attained a particular age can only be partially successful, and that the only effective remedy to attain the object in view was to pass a law, prohibiting the marriage of a girl under a particular age. However, the working of the Act had been fairly satisfactory; and even from the limited experience gained, the Governor-in-Council felt justified in recommending that the age of Consent should be raised from 13 to 14 and from 14 to 16 in marital and extra-marital cases respectively. The Government of the United Provinces thought that the experience gained was inadequate. The amendment had caused no uneasiness and was generally regarded as being salutary and educative. Opinion was generally in favour of advance and in particular of raising the age to 14 in marital cases. The Honourable Judges of the Allahabad High Court were unanimously of opinion that the age of Consent should be raised in both cases. The local Government would, however, allow some more time to elapse before modifying the law. The Government of the Central Provinces and Berar agreed with its

Judicial Commissioner that in the interests of the health and well-being of the community the age should be raised to 14 and 15 in marital and extra-marital cases respectively, that such change would not lead to any wide-spread discontent and that the initial lead must inevitably come from the Government by way of legislation. The other local Governments felt that the experience of the working of the Act was very limited and they therefore were not in a position to offer any opinion thereon.

37. *Amended law ineffective.*—The replies showed generally that very few cases of a breach of the law within the marital relationship came before the courts. It must, however, be admitted—and has, in fact, been abundantly proved during the course of the enquiry by this Committee—that there are more cases of infringement of the law of Consent in marital cases than those that come before the courts. Most witnesses have stated that the amended law has been of very little effect in preventing either early marriages or premature consummations. Some have spoken of the educative effect of the law, a fact which may be accepted, though its scope and extent must, for obvious reasons, be within the narrowest of limits. A few witnesses have given it as their opinion that the amended law has resulted in postponing marriages and preventing early consummations in certain cases. This class of cases must be very rare indeed, as a knowledge of the law hardly extends outside a few among the educated classes. Even among them, it is difficult to state how far the law has been solely or even directly responsible for such postponement or prevention. The age of marriage has undoubtedly gone up in some communities; but the rise in the age has been due more to economic reasons, to the difficulty of getting suitable bridegrooms and to the need of finding heavy dowries, than to a knowledge of the law and an anxiety to avoid its penalties. To a certain extent this rise has been also brought about by advance in education, movements of women's emancipation, social reform and the growing desire to impart a reasonably high standard of education to the girls. It must, therefore, be concluded that the law has not been of much effect in bringing about those results which were intended and it is not difficult to realise why the law has largely failed in its main purpose.

38. *Why law has largely failed*—*Ignorance of the law.*  
—Foremost among the reasons for the inefficient working of

the law is the fact that it is practically unknown throughout the country. A knowledge of it is confined to judges, lawyers and a few educated men, who may read newspapers or are in touch with the courts of law. The evidence establishes the indisputable fact that the general mass of the people is quite ignorant of the law. There are many people among various classes and communities, who consummate marriage, some even before puberty and others soon after puberty, which in many cases occurs before the completion of the 13th year, utterly unconscious of the fact that they may be violating a penal law and making themselves liable to serious consequences. They follow the even tenour of their life with age-long custom as their supreme guide in such matters. It is possible that a knowledge of the law and the consequences of a breach thereof might have ensured a greater respect for it in many instances.

39. There is one drastic means of bringing home to the people a knowledge of the law, and that is by the institution of a series of prosecutions where the law is evaded. But, as will appear later, the very nature of the offence precludes such a possibility. The rigour of the law has in fact been so rarely brought to bear on the delinquent husbands, and the instances of their conviction have been so few either before or after 1925, that ignorance of the law continues to prevail to much the same extent.

40. *Increase in age not striking.*—Nor was the change in law effected in 1925 such that it was bound to be known to the public. It did not strike the imagination of the people. The increase in age by a single year was a reform, over which the social worker could not be enthusiastic, and of which the orthodox need not have been unduly apprehensive. The alteration was so slight that it made no difference in existing practices. Such an imperceptible alteration could not be of any practical value; and even those, who were anxious to bring about a much needed reform in the marriage customs of the people, took no interest in educating the public about the law or in bringing to light violations thereof. This aspect of the law must be remembered, when it is urged as an objection that a revision of the law so soon after 1925 is not called for.

41. *Nature of the Offence.*—The ineffectiveness of the law is due partly at least to the very nature of the offence.

The consummation of a marriage necessarily involves privacy. It is true that among several castes and in various parts of the country, there is a ceremony called Gaona, Garbhadhan, Ritushanti or Rukhsati, which is performed on the occasion of, or as a preliminary to, the consummation of a marriage. But owing to the changing economic or social conditions, such ceremonies are falling into desuetude, and even where they are performed, they are not attended with that publicity, which once characterised them, and are only known to the nearest relations. Where widowers are concerned, the ceremony is almost invariably ignored. Had this ceremony been generally observed among all classes, it would perhaps have afforded some facility for detecting the offence.

42. *Reluctance of wife or her parents to complain.*—The other reason that has made the law ineffective is one that is inherent in the very nature of the offence. Ordinarily, in India, there is no chance of a wife making a complaint against her husband for the offence. The Indian girl-wife, apart from her ignorance of the law and her position of dependence, has been impressed since childhood with ideas about her devotion to her husband; so that she cannot be expected to complain against him. She would rather undergo any suffering than testify against him in a court of law, especially as social opinion may not uphold her.

43. The parents of the couple, likewise, cannot be expected to complain, because they do not want to see their children punished and exposed to public disgrace. They are interested in avoiding the scandal attaching to the exposure of a delicate family affair in a law court. They are also deterred from bringing offences to light, as the consequences to the girl may be very serious, if her husband is dragged into court and punished. After conviction, even if the punishment does not amount to imprisonment, it is not unlikely that the relations between the husband and the wife would be unhappy, and it may even happen that the husband may discard her and take another wife. Among Hindus generally there is no custom of divorce; and girls cannot re-marry even if discarded. Moreover, if the husband goes to jail, the girl and her people must always bear the stigma of being instrumental in putting him in prison. There are other difficulties, equally great, in bringing such cases to court. The offence is non-

cognisable and the Police cannot bring a complaint. Even neighbours or members of the same caste as the offender will be equally reluctant to bring cases to court, though they may be aware of them and would be inclined to avoid bringing disgrace on both the families. The public, in general, is indifferent; and public opinion is not so developed or active as to take the initiative in discovering or bringing to trial infringements of the law. Only those cases can come and do come to court, where there has been serious physical injury to the wife or there is some ulterior motive behind the complaint.

44. *Difficulty of ascertaining age of girls.*—The difficulty in ascertaining the age of the girl is another impediment to the efficient working of the law. Excepting the literate classes, few people can give the correct age of the girl; and when cases come to court, the oral evidence of the witnesses regarding age is likely to be uncertain. The registration of births, excepting in a few places, is defective, particularly in rural areas. It is not certain that all births are registered; the name of the child generally does not appear in the register; and there is no sequence of birth given regarding the particular child entered therein. All these things tend to make the ascertainment of the age of the child difficult and uncertain. No doubt, medical evidence and X-ray apparatus may help to overcome these difficulties, but doctors often differ; and even the X-ray test does not ensure the exact age. The X-ray apparatus is rarely available and, even when available, can easily make a mistake of one year, while the range of error in the case of medical opinion can be even greater. Now, since to prove the offence within marital relations it is necessary to establish that the age of the girl is below 13, the difficulty of securing a conviction is obvious. It is true that this difficulty exists in almost all the offences, where a certain age has been prescribed, but it is more so in this particular class of cases, because the parties, most competent to testify to the age, are the most reluctant witnesses and have a strong incentive to suppress the truth.

45. *Other reasons.*—The offences under the law are not taken to court also because—

- (a) the prosecution involves loss of time and money which the poor cannot afford, and

- (b) even cases, where injuries have occurred, are privately adjusted since the families, being related by marriage, want to maintain amicable relations.

46. Thus it will be observed that the law is ineffective as regards a class of people, including a few even amongst the educated, who consummate marriage before or soon after puberty. Amongst the socially advanced classes generally and those communities which practise post-puberty marriages, the law has been of no consequence, since consummation of marriage is never performed below the age of 13 and there can, therefore, be no cases of infringement of the law.

47. *Dissatisfaction not general, but confined to persons of advanced views.*—This accounts for the absence of dissatisfaction with the present law amongst the public generally. The law has simply not touched them. The dissatisfaction that exists amongst the advanced section of the public is partly because the law is futile and partly because it affords no protection to girls over 13, who still need it on account of their tender age. While several local Governments and some witnesses have stated that the time, that has elapsed since the enactment of the law in 1925, is not sufficient to gather facts justifying a necessity for change, one thing emerges clearly from the evidence, that the law even at 13 has been largely ineffective. That by itself may be a very good reason to review the present position and examine if the law cannot be made more effective and comprehensive to afford protection to girls of 13 or even higher ages.

48. The dissatisfaction amongst the more thoughtful section of the public has, within the last three years, gained in volume and intensity; the more so, as women of this country are increasingly becoming conscious of the evil consequences of early consummation and early maternity, and the more advanced among them have in unmistakable language expressed themselves in favour of raising the age of Consent and supporting Sarda's Bill, penalising marriages below a given age.

## CHAPTER IV.

## PROVINCIAL CONDITIONS AND NATURE OF EVIDENCE.

49. *Why Provincial examination necessary.*—The law of rape within the marital state applies to the whole of British India, and any modification of the law would be similarly applicable to the entire country. It will, *primâ facie*, be relevant to consider the conditions prevalent generally, throughout the country, to find out the state of public opinion and to see how far a change in the law is needed. Details of the practices in regard to marriage or consummation of different castes and communities or even of the people of different Provinces may be considered unnecessary, or even irrelevant. But while the law will undoubtedly be of general application, a correct appreciation of the position will not be possible unless the conditions in different Provinces and even among some particular castes and communities are examined. It is needless to dwell on the diversity of the population of the country or the variety of customs prevalent. Generalisations regarding such customs would be considered exaggerated and very wide of the mark in some Provinces, while in others they will be regarded as gross understatements of the case. Again the practices vary to such an extent in different castes, that averages, based on the state of affairs in a number of castes put together, would give a very inadequate and perhaps a grossly inaccurate idea of the extent of the evil. For all these reasons, it has been considered desirable to consider the conditions of each Province, as disclosed by the evidence which has been available to the Committee.



## PUNJAB.

50. *General conditions in the Punjab.*—The Punjab presents fewer difficulties than most other Provinces. But, early marriage, both among Hindus and Muslims, is not as rare as one would be led to expect. The Census of 1921 shows that in the age period 5-10, 70 Hindu, 26 Muslim and 25 Sikh girls out of every thousand were in a married\* state. In the age period 10-15, 367 Hindu, 187 Muslim and 223 Sikh girls were married. The Punjab is a predominantly Muslim Province, nearly 13 millions out of 25½ belonging to the Islamic faith. The Hindus form 9 millions, and the Sikhs 3 millions of the population. It is to be remembered that in the tracts to the west of the Punjab Muslims predominate, and, as will be shown from an examination of the evidence of the North-West Frontier Province, the custom among them is to perform late marriages. In spite of that, both from the census figures and the evidence before us, it is clear that the tendency has been for Muslims to approximate themselves to the Hindu custom in this regard, rather than for the Hindus to modify their practices, under the influence of Muslim example.

51. *Influence on communities.*—Next to the Province of Bengal, the Punjab possesses the largest Muslim population, having a little less than one-fifth of the total Muslim population in India. It is generally believed that there is a larger percentage of Muslims of foreign blood, *i.e.*, non-converts, than in any other Province, the proportion being estimated at 15 per cent. of the population. In spite of these facts the number of early marriages prevailing in this community is surprisingly high. In the age period 10-15, 198 girls were found married in 1901, as against 221 in 1911, and 189 in 1921. out of every thousand. The figures show that there has been no tangible improvement during the two decades and that in fact there has been a tendency to back-sliding in 1911. The influence of neighbouring communities on social customs is also seen when the figures of early marriages in different parts of the Province are compared. In the Himalayan area, where there

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\* The expression 'married' wherever occurring in this chapter means 'married' as well as 'widowed', unless expressly stated otherwise.

are only 30 Muslims as against 642 Hindus per thousand of the population, the Muslim population appears to be inclined to go a step further than even the Hindus. 411 Muslim girls out of every thousand were found married between 10 and 15 as against 390 Hindu girls. In the Indo-Gangetic plain where the Hindu population is only slightly in excess of the Muslim, 228 girls are in a married state among Muslims as against 392 among the Hindu girls. In the sub-Himalayan range where there are about 5 Muslims to every two Hindus, 210 Muslim girls are married as against 345 Hindu girls. The North-West district area is predominantly Muslim, the Hindu population forming less than twenty per cent. of the population. The influence of the larger community is clearly apparent, in the sudden drop in these figures, only 130 Muslim girls and 225 Hindu girls out of every thousand being found married between 10 and 15. If two typical districts where each of the communities preponderate is taken into consideration, the mutual influence of the two communities is more clearly seen. In the district of Karnal\* according to the census of 1921, there were 573,224 Hindus and 235,618 Muslims, males and females, 49 Hindu and 5 Muslim girls out of every thousand of girls were married before the 10th year. In the same district 249 Hindu and 361 Muslim girls were married before the 15th year. In the district of Shahapur,\* there were 596,100 Muslims as against 82,182 Hindus, males and females, and 3.7 Hindu and 1.9 Muslim girls out of every thousand of girls were found married before the 10th year. In the age period 10-15, 66 Hindu and 37 Muslim girls were found married per thousand of girls.

52. *Retrogression in Muslims and influence of the former.*—If similar figures for the year 1891 are examined, it is found that there has been a considerable retrogression, particularly in the Muslim community in both the districts. Karnal reported in that year 92 Hindu and 82 Muslim girls as married below the 10th year, while Shahapur showed 14 Hindus and 4 Muslim girls out of every thousand, in the same condition.\* It is not surprising therefore that the writer of the Census Report for the Punjab in 1911, remarks, "Early marriage has contributed into child marriage and the consummation

\* Census of India, 1891, General Report. page 66.

marriage when either one or both of the parties are still immature. The wife invariably being younger than the husband, the union naturally tells on her health. The Castes which practise early marriage on an extensive scale have generally a smaller proportion of females at the age period 12-15. Inquiries into a large number of cases show that when the marriage of young people is consummated at an early age, say, when the boy is not more than 16 years or the girl is 12 or 13, a fairly large percentage of wives die of phthisis or some other disease of the respiratory organs or from some ovarian complication within 10 years of the consummation of marriage. Most of the reformed religious societies, particularly amongst the Hindus and the Sikhs, are conducting a regular crusade against this custom. But from the figures, it would appear that the proportion of married females in the age period 10-15, to the total females of that age period has slightly increased instead of showing a contraction although the improvement from 459 in 1891 to 283 in 1901 was considerable. This would lead to the conclusion that matters as regards early marriage are more or less at a standstill and that the influence of the Reformer is confined to the educated section and has not reached the masses". It may be noted that the number of females of the age period 10-15 who were married was 254 per mille in 1921.

53. *Higher class Muslims and widow re-marriage.*—A fact that has some bearing on the consideration of this question is that widow re-marriage is not encouraged among the higher class of Muslims. A Mohammadan Jat or Rajput, a Sheikh of Arabian descent or a Moghul in the Eastern Punjab, will not think of marrying a widow. The popular persian poet Saadi has said—

“ Rah-i-rast biro garche dur ast  
Zan-i-Bewah makun garche hur ast ”

“ Tread the straight path safe, although it more  
distant be,

So take not to wife, a widow, even if she a Houri  
be.”

(Census Report, 1911.)

54. *Age of puberty and consummation of marriage.*—The age of puberty in this Province varies from 12 to 16. It is slightly lower among the Hindus than among the Sikhs

or Muslims, being nearer 13 than 14. Among the Sikhs and Muslims, as also in the rural population generally, it is between 14 and 16. Consummation soon after puberty seems to be a general custom among Hindus and Muslims. In Hariyana, which is mainly composed of the districts of Rohtak and Gurgaon, cohabitation is not uncommon before puberty. The custom of Gaona or Muklawā obtains in the Punjab to a fair extent, particularly among the higher classes and rural areas. But the custom is fast disappearing and in any case the period which elapses between marriage and Gaona is becoming shorter and shorter, the average period at present according to certain witnesses, being between 1 and 2 years.

55. *Muslim evidence.*—It has been shown in the preceding paragraph, that the practice of early marriage is prevalent among Muslims and shows a tendency to become more widespread. That the danger of the situation is realised is clearly proved from the evidence before the Committee. Muslim witnesses generally have favoured the raising of the age of Consent at least to 15, and also penalising marriages before 14 or 15 by legislation. This view is strongly expressed by the Hon'ble Mr. Justice Agha Haider of the Lahore High Court, the Hon'ble Malik Feroze Khan Noon, Minister for Local Self-Government, Nawab Mohamed Hayat Khan Noon, Deputy Commissioner, Gujranwala, Khan Bahadur Sheikh Sirajuddin, Deputy Commissioner, Jhang, Malik Zaman Mehdi Khan, Deputy Commissioner, Mianwali, and Mian Abdul Aziz, Deputy Commissioner, Hissar. They are also clearly of opinion that any legislation which will fix a minimum age of marriage and penalise marriages below that age would not be against the tenets of Islam. Mr. Justice Agha Haider would raise the age of Consent to 16, while Mian Abdul Aziz would go further and fix both ages at 18 or 20. The President of the Municipal Committee, Amritsar, Khawaja Ghulam Sadiq, Bar-at-Law, is also in favour of fixing a minimum age of marriage. The two Muslim ladies, Mrs. Hamid Ali and Miss Khadijah Ferozuddin have expressed themselves in favour of raising the age of Consent to 16. They have further said that marriage below this age should be penalized by legislation. One of the sections of the Qadian community, through its representatives Dr. Mufti Mohammed Sadiq

and Mr. Din Mohamed, desire that the age of Consent may be raised to 14. On the question of a minimum age of Marriage, they have declared themselves against any penal legislation, on the sole ground that in such matters, we should move with the watchwords "Slowly and cautiously". They are however of opinion that such a legislation will not be against any religious injunction of Islam.

56. Of all the Muslim witnesses examined, only two, the Hon'ble Nawab Sir Umar Hayat Khan, and Sheikh Din Mohammed, M.L.C., are of opinion that there should be no minimum age of Marriage by legislation and that the age of Consent should not be raised.

57. *Hindu and Sikh evidence.*—The position of the Sikhs and the Hindus may now be examined in greater detail. It is noticeable that the question of religious sanction has very little bearing on the practice of early marriage amongst the several castes of the Hindus. In fact those which practise it most can be stated to be not controlled by any injunctions. According to the Census of 1921 the Chamars, (Depressed Class) who form 1,140,000 of a total Hindu population of 9 millions, get 175 out of every 1,000 girls married before the age of 12. The Rajputs who are nearly two millions married 98 of their girls below that age. The Kumhars with a population of 574,000 married 135 girls, the Kanets married 138 girls, the Lohars 124 girls and the Julahas 121 girls below 12. The custom of early marriage is thus seen to be more largely prevalent among the menial castes than among the higher ones.

58. *Reform activities.*—The Reformer has been specially at work in the Province of the Punjab to remedy what he considers the evil of early marriage. Various religious organizations such as the Arya, Brahma, Dev and Dharm Samajists have been at work in this direction. Reform Societies have also been formed in most of the important castes of the Hindus. The Rajput Sabha, the Khathri Conference, the Aror Bans Sabha, the Mohyal Conference and the Brahmin Sabha are some of the institutions which have made the abolition of early marriage one of the principal items of their programme. The Mohyal Conference has resolved that boys of less than 20 years and girls below 14 should not be married. The Dev Samajists have resolved on a minimum marriageable

age being 16 for girls and 20 for boys. The Khathri Conference has resolved on the age being 14 and 18 respectively. The Brahmin Sabha, an institution of comparatively recent origin, is working in the same direction. But as the writer of the Census Report remarks "In spite of all the agitation for early marriage, the reform societies do not appear to have had much practical effect so far even within their own circles, much less upon the masses".

59. The evidence of Hindu and Sikh witnesses of the Province is practically unanimous in favour of an advance. Religious texts are not regarded as a bar to legislation, either advancing the age of Consent or fixing a minimum age of Marriage. On the other hand, they have been interpreted by some witnesses, notably Mr. Bhagwad Datt of the D. A. V. College, as prohibiting early marriages either directly or by necessary implication. The general opinion is in favour of fixing the age of Consent at 16 and to have a minimum age for Marriage fixed by law. Most of the witnesses would have the latter age at 15 while some would go to 18. The Honourable Lala Ram Saran Das, however, would not like to go beyond 13 in deference to orthodox opinion, though he is personally for a higher age of Marriage. Raja Narendra Nath, M.L.C., Rai Bahadur Lala Sevak Ram, M.L.C., Rai Bahadur Lala Mohan Lal, M.L.C., Lala Kesho Ram, M.L.C., Dr. Shave, M.L.C., Rai Sahib Gangaram, M.L.C., Dewan Bahadur Dewan Somnath, District Judge, Lyallpur, Dr. Kedarnath, Dr. Behari Lal Dhingra, C.I.E., Messrs. Ganpat Rai, Dunichand, Janki Das and R. R. Kumaria, are some of the witnesses who have strongly advocated legislation on both points. The Sikh evidence is equally unanimous on the point and suggests a minimum of 15 years in either case. Sardars Lachman Singh, Anand Singh, Mangal Singh and Abhay Singh are exponents of the Sikh point of view.

60. *Women's evidence.*—The ladies, both Hindu and Muslim, who have either appeared before or sent statements to the Committee are equally earnest in pressing for legislation. The Muslim evidence has already been referred to. Among the Hindu ladies are Rani Narendranath, Dowager Rani Amrit Kaur of Mandi, and Shrimati Leelavati Kohli of Lahore. A perusal of the evidence leads only to one conclusion, that the Punjab is strongly

behind the agitation for an advance in the age of Consent and for fixing a reasonably high minimum age of Marriage.

61. As regards extra-marital offences, they seem to be sufficiently frequent. There is a good deal of seduction and abduction of young girls in the Haryana Division. There is a regular traffic in girls, practically of all ages, in the Punjab in general. Some people procure girls from the neighbouring Provinces also. The evils appear to be due to the paucity of female population in this Province. The prevalent negligence of girls would also to some extent probably account for the paucity of females. The witnesses want strengthening of the law in the extra-marital relation also, as they think girls of even 15 are not in a position to protect themselves. They require that the extra-marital age should be raised. The recommendations about age in this respect range from 16 to 21; 18 may be taken to meet their wishes.

## NORTH-WEST FRONTIER PROVINCE.

62. The Frontier Province consists of over 2 million Muslims, 150 thousand Hindus and 28 thousand Sikhs and is predominantly Muslim. The large bulk of the Muslim population is Sunni as everywhere else in India, the Shias numbering only 80,200. In fact the total Shiah population of the whole of India is 736,898 out of a Muslim population of 67,982,694.

63. *Conditions in the North-West Frontier Province.*—The practice of child marriage is least prevalent in this Province. No child under five years of age has been returned as married either among Hindus or Muslims.\* The influence of the practices of the large Muslim population and the constant example of tribal customs across the border have both tended to bring about this result. In the quinquennial age period 5-10, only 2 out of every 1,000 Muslim, 11 Hindu and 17 Sikh girls are in a married state. In the age period 10-15, 121 Muslim, 190 Hindu and 306 Sikh girls out of every thousand are found married. These figures compare very favourably with those of the Punjab where 216 Muslim and 392 Hindu girls are in married state at this age period. It is however significant that among the Muslims, the figure for 1921, *i.e.*, 117, is higher than the corresponding figure of 1911, *i.e.*, 112. The practice of early marriage varies in different districts, being most prevalent in Kohat and least in Dera Ismail Khan. A few sects and castes observe this custom more extensively than others. The Rangrez (Dyer sect of Muslims), though a small sect, marry most of their girls at an early age. Among the Hindus, the Brahmins and Bhutias are most addicted to the practice. The age of puberty is naturally higher than elsewhere in India. The average age is stated to be 14 and most girls attain puberty between 13 and 14 years. The practice of consummation before puberty is not prevalent to any extent in the Province, though we were told that among the Hindus of Shankargarh there is early marriage widely prevalent and cases of pre-puberty consummation are not unknown.

64. *Muslim evidence.*—The evidence of witnesses corresponds to the practice prevalent. Practically all the

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\* Census of India, 1921, Volume I, Part I, pages 279-280.



witnesses are in favour of marriages at a reasonable age and most of them favour legislation to bring about that result. The Muslim witnesses are strongly in favour of the proposal. There is no question of religious injunction or interference with the tenets of Islam. In fact the evidence is that such legislation will be in consonance with the spirit of Islam. Khan Bahadur Muhammad Akbar Khan, District Judge, Bannu, is strongly of opinion that the defect of early marriage must be cured by legislation. Social reform and education are doubtful, lengthy and inconvenient methods. Legislation is the only sure and direct method. Khan Sahib Kazi Mir Ahmad Khan, Vice-President of the Peshawar Municipality, is of the same opinion. Khan Bahadur Sadullah Khan, Assistant Commissioner, Hazara, Khan Bahadur Kuli Khan, Assistant Commissioner and Mr. Nur Baksh, Pleader, agree with them. All of them advocate 14 as the minimum age of Marriage and the same age for Consent within the marital relation. Khan Bahadur Maulvi Saiduddin, Additional Judicial Commissioner, would not lower either of these ages below 16 and strongly urges legislation. Nawabzada Muhammad Nasir Khan, District Judge, Dera Ismail Khan and Khan Bahadur Nawab Wali Mohammad are equally firm in the view that 16 ought to be the minimum age for Marriage and Consent, the latter trenchantly remarking that "Social reform must assist and not supplant the penal law". Khan Sahib Ghulam Sarwar Khan and Mr. R. Inayatulla of the Education Service are both for an advance by legislation and suggest 15 years.

65. It is unnecessary to further dilate on the evidence when it is so unanimous. The only witness who represented the conservative view was Aga Pir Sayad Munir Shah, Secretary, Anjuman-i-Jafria of Kohat who preferred social reform, and would reduce the age of Consent to 12 so far as marital relations are concerned.

66. *Hindu and Sikh evidence.*—The Hindu and Sikh evidence is unanimously in favour of advance by legislation. Most of them suggest 16 as the minimum age of Marriage and marital Consent. Dr. Paramanand of Bannu, a medical practitioner of wide experience, Rai Bahadur Lala Karam Chand, Dr. Bhola Nath, the President of the Arya Samaj, Bannu, Rao Sahib Jhinda Ram, Lala Jai

Dyal Gadi, Rai Bahadur Thakur Dutt, and Mr. Tekchand Nangiah are a few of such Hindu witnesses.

67. An examination of the evidence leaves no doubt that public opinion in the Province, as represented by the witnesses, is strongly in favour of a law of Marriage fixing a minimum age and an advance in the age of Consent within the marital relation, and that it would desire at least 15 to be that age.

68. As regards extra-marital relations, there seems to be more trouble here than in the Punjab. There are not so many rapes as seductions except in the Hazara district, where rapes are frequent. It is noticed that the Punjab imports a good many young girls from these parts to fill its brothels. It is owing to these evils, as pointed out above, that the people get their daughters married early. In general, 16 is the age suggested for the age of Consent in non-marital cases. Of course some prefer the age 18.

## DELHI PROVINCE.

69. *Conditions in Delhi Province.*—The Province of Delhi is inhabited by various communities. The age of marriage is not so low here as at some other places. Marriages of girls among Hindus generally take place between the ages of 10 and 18, more generally at 12. The Marwaries appear to marry their girls below 12 and the Jains after 14. As regards Muslims, it seems that their girls are married at about the age of 13 or 14. The lower classes amongst them however effect child marriages which are sometimes performed at 3, 4, 7 and 8 years of age.

70. *Age of puberty and Consummation of marriage.*—The age of puberty amongst all sorts of people seems to range between 12 and 13, the margin being a bit higher for the Muslims. Consummation generally takes place after puberty at about 13 or 14. The only community that forms an exception to the general rule is the Marwari community amongst whom consummation takes place even before puberty in several cases. Some instances of this type are also to be found among the lower classes and in the case of elderly husbands. As at other places, pre-puberty marriages and consummations soon after puberty are due to the belief that there are religious injunctions to that effect. In the villages surrounding Delhi, both the age of puberty and the age of consummation are higher by a year or two.

71. *Evidence.*—The evils of early consummation and early maternity seem to be patent to the public in general. Mrs. Chatterjee, however, attributes the alleged evils to causes other than early consummation and early motherhood, and points out that infant mortality and debility of mothers are found to a larger extent in the case of educated girls though marrying late. She also states that the evils of early motherhood are absent in villages. It appears that in the case of early maternity, usually first child-birth is premature and the child dies.

72. The majority of witnesses is for fixing a minimum age for Marriage as well as for raising the age of Consent. There are, however, objections from a few witnesses to either of the laws. Jains do not want a Marriage law. Mr. Pyarelal holds that a foreign Government, in fact, any

Government or Legislature, has no right to interfere in such domestic and social affairs. The other objection which is based on the ground of religion comes chiefly from the Muslims: Moulana Murbanuddin, Editor, Al-aman, says that it will be an interference with religion though it is admitted by him that no age has been fixed for marriage in their religious scriptures and that Shariyat looks down upon consummation of marriage before puberty. He however has no objection to a Marriage Law at 15 or 16, provided exemptions are allowed. In the opinion of Khawaja Hassan Nizami, there is no Quranic injunction regarding the marriageable age of a girl or a boy. He recommends 14 for the minimum age of Marriage and 15 or 16 for the age of Consent, and holds that without a Marriage Law, the Age of Consent Law cannot be effective. He recognises that some people would no doubt object, but thinks that there should be no agitation on religious grounds because Muslim religion commands men to have the greatest regard for the welfare of their women. In general, witnesses recommend 16 as the age for Marriage and also for Consent within the marital relation, though as a matter of compromise they would have 14 for Marriage.

73. It may be pointed out that while some of the witnesses think that a Marriage Law would be more effective and the Age of Consent Law ineffective as hitherto, there are some who think that the Age of Consent Law would be more workable and effective than the Marriage Law. The chief ground given is that mere punishment of fine in the Marriage Law will not be deterrent while the punishment of imprisonment is not feasible. Whichever law is enacted and whatever age is fixed, there is no apprehension of serious opposition or resentment in this part of the country.

74. *Age of Consent outside marriage.*—As regards offences of rape, seduction and abduction, they are frequent. It is said that there is a regular traffic in girls between 13 and 20, practically from all classes. They are said to be sent to the Punjab where demand for them is great owing to the paucity of girls in that Province. To meet this evil, witnesses recommend the age 16, 18 or even higher for the age of Consent outside marriage.

**AJMER-MERWARA.**

(Not visited by the Committee.)

75. *Conditions in Ajmer-Merwara.*—In Ajmer-Merwara marriages of girls take place from 10 to 12 years of age and most of them occur at 12. Early marriage is much prevalent among the Jats.

76. *Age of puberty and consummation of marriage.*—The age at which girls in this part of the country attain puberty is 13 or 14. The bride and bridegroom are locked up in a room for a night soon after marriage and consequently in several cases consummation takes place before puberty and before the age of 13. It is more so, because there being no widow marriage, widowers marry young girls of immature age. As a result of such early consummation, the health of mothers and progeny suffers and there is a high maternal and infantile mortality.

77. *Evidence.*—The people have come to perceive the bad effects of this custom and the Conferences and Sabhas that have taken place there have passed resolutions restricting marriages before a certain age. The Maheshwari Conference supported Sarda Bill and the Hindu Sabha, Dr. Gour's Bill. As far back as 1908, the Bhargava Sabha raised the age of marriage to 15. Thus, there is an awakening among the people and they demand a higher age both for consummation and marriage. Witnesses do not consider puberty to be a sufficient indication of physical maturity and recommend the age of 15 or 16 for marital Consent. They want the Age of Consent Law as well as a Marriage Law. Kunwar Chand Karan Sarda thinks that the minimum age of Marriage will be more effective provided it is fixed at 16 years. There might be some dissatisfaction against and opposition to the age being fixed, by a certain portion of Hindus-Maheshwaries and the orthodox. The dissatisfaction and opposition, it is considered, would however be negligible and not serious.

78. *Age of Consent outside marriage.*—As regards extra-marital cases the age of 16 to 18 is suggested.

## BOMBAY PRESIDENCY.

79. *Conditions in general in the Bombay Presidency.*

In the Bombay Presidency, the conditions more or less vary with different communities in different parts of the country. In Sindh, early marriage is common, except among Amils and the higher classes of Muslims. In Gujerat and Kathiawar, early marriage prevails largely among all castes, except among Brahma Kshatriyas and Nagar Brahmins living in towns and the upper classes of Muslims. It is very rampant among the lower castes, such as Ghanchis, Kanbis, Kolis, and Dheds.

80. In Bombay proper, early marriage is practised largely among all classes, except the Gaud Saraswat Brahmins, Pathare Prabhus, Kapol Vaishyas, and the upper classes of Muslims. It is very common among Bhatias and Marwaris.

81. In the Deccan districts too, early marriage is common, except among the Chitpavan Brahmins, and the Saraswat Brahmins. It is common among the Mahrattas Mahars, Holiyas, Lingayats, Shimpees, Vakkals and other lower castes.

82. Broadly speaking, the practice of early marriage prevails in the rural areas and among the uneducated classes, and is gradually disappearing from among the educated classes. It is practically non-existent among Parsis, and Christians.

83. In the Bombay Presidency, girls are married, more largely than elsewhere, at very low ages. In 1921, there were 1666 girls, married or widowed, under one year of age, 1671 girls married or widowed between one and two years of age, 4378 girls married or widowed between two and three years of age, 7219 girls married or widowed between three and four years of age, 12834 girls married or widowed between four and five years of age, 193582 girls married or widowed between five and ten years of age and 498706 girls married or widowed between ten and fifteen years of age.

84. *Muslims.*—The position of the Muslims is somewhat better. In 1921 they had 145 married or widowed girls under one year of age, 131 married or widowed girls b

tween one and two years of age, 341 married or widowed girls between two and three years of age, 487 married or widowed girls between three and four years of age, 716 married or widowed girls between four and five years of age, 11702 married or widowed girls between five to ten years of age and 41011 married or widowed girls between ten to fifteen years of age.

85. *Selected Castes*.—Taking again the number of married girls under twelve years of age among selected castes, early marriage is shown to figuré very largely among Kunbis, Lingayats, Mahars and Marathas, and the percentage is also high among Chamars and Shaikhs of the Deccan Districts, the Dheds of Gujerat and the Baluchis and Kutchis of Sindh.

86. *Age of puberty and consummation of marriage*.—The age of puberty in the Presidency ranges from 12 to 15. The age is slightly lower for Gujerat and higher for Sindh, within these limits. The practice of Anu or Garbhadhan or Ritu-shanti generally prevails in many parts of the country and actual consummation is usually postponed till puberty. Among the lower castes, consummations before puberty are not however uncommon, in some castes.

## **BOMBAY PROPER AND SURROUNDING TRACTS.**

87. Witnesses examined at Bombay were mostly from Bombay proper and therefore they represent, more or less, conditions obtaining in Bombay and tracts surrounding it.

88. *Conditions in Bombay*.—There are all sorts of communities here and the practices among them regarding marriage and consummation vary very much. Early marriage is common enough. The communities given to this practice are the Gujeraties and Bhatyas and to some extent Marwaries also. They generally marry before 12 and 13. The communities advanced in this respect are Saraswat Brahmins, Pathare Prabhus, Parsis and Christians. Among them marriages take place at 16 and above and never before 14.

89. *Age of puberty and consummation of marriage*.—The average age of puberty is 13 and consummation necessarily follows soon after that age. Ordinarily, consum-

mation does not take place till after puberty and before the age of 13. But consummation before puberty is not exceptional. It is prevalent among the Gujeraties in particular to a large extent. Likewise, consummation before the girl attains the age of 13 can be said to be common among the Marathas. The age of consummation is higher among Saraswat Brahmins, Pathare Prabhus, Parsis and Christians owing to a higher age of marriage prevalent among them, and it may be taken generally to be 16. The evidence shows that mothers and children from these communities are better in health than others. It is recognised that early marriage and early consummation subject the girls to various diseases and bring about mental and physical deterioration.

90. The evidence establishes that early marriage as a religious institution obtains only among the orthodox people and others follow it merely as a custom. The orthodox hold however is not strong enough and is losing strength day by day. As education is spreading and social reform is making advance, the age of marriage is rising steadily. The other factors that contribute to the rise in the age are, the economic conditions and the difficulty of obtaining suitable husbands. It seems that there is a movement spreading among the various castes for raising the age of marriage. For instance, the Jains at a recent conference passed a resolution that girls should not be married before 13.

91. *Maternity and infant mortality among mill hands.*—Maternity begins more often at the age of 15. In the mill hands the infant mortality is due to the conditions obtaining in the mills and the consequent strain involved on the females. Better regulations regarding work and sanitation are suggested to reduce the mortality. As between Hindus and Mohammadans, it is found that Hindu girls are stronger and better than their Muslim sisters. This is said to be due to the Purdah system prevalent amongst the latter.

92. *Evidence.—Marriage Law.*—In Bombay, the evidence is to fix the minimum age of Marriage and the age of Consent at sixteen years. But in view of the opposition of the orthodox classes, persons like Sir Purushottamdas Thakurdas, Sir Lalubhai Samaldas, Mrs. Chunilal Setalvad, Mr. Makanji Mehta of the Mangrol Jain



Sabha, Mr. D. G. Dalvi of the Social Reform Association and others are content at present to fix the minimum age of Marriage at fourteen years. Mr. M. R. Jayakar, Dr. Mrs. Sukthankar, Professor V. N. Hate of the Daivadnya Association, Mr. M. N. Talpade of the Pathare Prabhu Social Samaj, and others recommend that the minimum age of Marriage should be fixed at fifteen years. But most of the remaining witnesses, including Mr. Jamnadas Mehta, M.L.A., Dr. Miss M. I. Balfour, Mr. Kanji Dwarkadas, Miss Engineer, Dr. Jadavaji Hansraj of the Bharat Mitra Mandal, Rao Bahadur G. V. Pradhan, Dr. Y. V. Bhandarkar of the Prarthana Samaj, Dr. Mangaldas Mehta, Mrs. Faiz Tyabji and others recommend that the age should be fixed at sixteen years.

93. *Consent Law*.—As regards the age of Consent, some are in favour of parity of age, some in favour of fifteen and others in favour of sixteen years of age. Mr. S. K. Bole, J.P., M.L.C., however, wants that both for Marriage and Consent, the age should be eighteen years. Mr. I. S. Haji wants to fix the age of consent at sixteen years, but he wants no age for marriage. Mr. Abdul Rauf Khan is opposed to both.

94. *Medical evidence*.—The evil consequences resulting from early consummation or early maternity are not however, seriously questioned by any of the witnesses. Dr. Miss Balfour, who has been doing medical work for the last thirty-eight years, states that she compared the class of young mothers of sixteen and under with those of seventeen and over as regards the incidence of still birth, premature birth and infant birth-weight and found that the results were unfavourable to the mothers of sixteen and under. The incidence of still birth, she says, was at the rate of 186 per thousand as compared with 83 per thousand for the older women, or, in other words the young mothers gave birth only to 656 per thousand full time living children as compared with 774 per thousand full time living children for the older women. She goes on to say:—"These full time children of the young mothers weighed an average of 5.88 lbs. at birth as compared with 5.96 lbs. for the full time children of the older women. The difference is small, but to put it in another way, it means that 43 per cent. of the full time children of the young mothers were below the average weight of 6 lbs. as

compared with 33 per cent. in the case of the children of the older women". She further says that in her opinion, early cohabitation and early maternity were responsible for some part of the high maternal and infant mortality in India and consequently for some part of the poor physique of many of the people. Her statement is corroborated to some extent by the evidence of Dr. G. J. Campbell, Principal of the Women's Medical College, Delhi, who states :— If the mother is immature, her child is of necessity below par in vigour, in power to resist disease, and in weight. The last of these can be easily compared. The average weight at birth of babies born in Calcutta is 5 lbs. 11 ounces; here it is slightly over 6 lbs.; in England it is 7 lbs. If the family system has broken down, as is now common in cities, the mother is too young and inexperienced to take care of her child satisfactorily. These factors certainly contribute to the excessive infantile mortality in India. Dr. Mrs. Sukthanker, Honorary Physician for children in the Cama and Albless Hospitals, states that in the Welfare Centres, she had recorded eight children of immature mothers out of a total of forty, two of whom were still births and the rest were  $4\frac{1}{2}$  to 5 lbs. in weight. The medical opinion is not however, unanimous. Dr. Miss. Balfour herself stated that efforts have not yet been made to see if infantile mortality is due more to early consummation than to other causes. Again Dr. Mehta of Nowrosjee Wadia Maternity Hospital, Bombay, says that the weight of the child has nothing to do with early or late consummation and that even in young and weak mothers progeny may be healthy. The fact that is however fully endorsed is that frequent maternity is responsible for low vitality.

95. *Cases of injuries cited by witnesses.*—Rao Bahadur G. V. Pradhan gives three instances in which girls from 11 to 14 years old, who had not attained puberty were forced to submit to sexual intercourse by their husbands, with the result that two of them received injuries and the third resisted and resented and left the house and went away to her father's place. Mr. Masani gives two instance which came to the notice of the Vigilance Society, in which the consummation was found to have taken place at the age of 10 years. Sir Purshottamdas Thakurdas gives an instance within his personal knowledge of a person who lost his wife at the age of 26 years, and was re-married

when he was 28 years old to a girl who was 12 years of age, very healthy and extremely well built for her age; but within 18 months of the latter marriage, the legs of the lady got paralyzed and she died a premature death at the age of 24 or 25 years. Mr. I. S. Haji refers to a case recently tried by the High Court at Bombay, in which a Madrasi husband had raped his minor wife under the age of 13 years before the girl had attained her puberty; and Dr. Jadavaji Hansraj mentions another in Cutch in which a girl wife died in similar circumstances of profuse haemorrhage. In certain parts of the country among certain communities, girls are at times sent to their husbands before they attain puberty. Mrs. Faiz Tyabji states that among the Daudi Bohras and among the menials, very young girls are married and there is a very great toll of human life. In Khandesh, a girl about 12 years old was sent to her husband who had another wife living, and she was off and on subjected to sexual intercourse and when she became very weak and ill, a telegram was sent by her husband to her father that the girl was suffering from Cholera. That case ended in the conviction of the husband. Dr. Sukthankar refers to a case in the Cama Hospital at Bombay in which, as a result of cohabitation after puberty but before the girl was physically fit, the girl lost her health and she was suffering from severe mental and nervous shock, resulting in hysteria and dread of marital relations. The girl there was over 14 and under 15 years in age, and the husband was about 40 years old. Unless a girl is physically well developed, the consummation of marriage even with a girl, who has just attained puberty is not therefore without danger to her health and constitution.

96. It is seen from the evidence that, excepting a few Mohammadans, the witnesses in general are for raising the age of Consent, and they think it should not be lower than 16. To prevent physical deterioration and to make the law effective, they prefer and advocate fixing a minimum age of Marriage and penalising marriages below that age. In general, 16 is advocated for the age of Marriage but none likes to go below 14, even by way of compromise. The objections to raise the age of Marriage and Consent are based on religious grounds. The Muslim standpoint is that as the Mohammadan law does not pre-

scribe any age for marriage, it would be an interference with their religious law if an age is fixed in that respect. However, some witnesses have deposed that legislation fixing the marriageable age will not at all interfere with the Muslim religion. The general trend of evidence thus is that the law of the Age of Consent, whatever the age, would not by itself be effective unless there is a law fixing the minimum marriageable age also. In fact, some think that there is no necessity whatever of the Age of Consent law, so far as marital relations are concerned, if the minimum age of Marriage be fixed at a sufficiently high figure.

97. *Age of Consent outside marriage.*—As regards the offences of rape, seduction and abduction, it is found that they are common to a very great extent in certain communities. The occurrence of such offences among them is attributed to the fact that there is a great paucity of females among them. The evil obtains in the mill hand population. Brothels are largely responsible for seduction and abduction of young girls and several victims have been rescued from their terrible fate from these dens by the Vigilance and other Societies that are working in Bombay. The age of 18 is therefore suggested by a large number of witnesses for extra-marital offences to give effective protection to young girls.

## THE DECCAN AND KARNATAK.

98. *Conditions in the Deccan and Karnatak.*—The witnesses examined at Poona were from Poona proper and from the districts of Ratnagiri, Bijapur, Kanara, Belgaum, Khandesh, Dharwar and Satara and are therefore representative of the whole of the Deccan and Karnatak. The Brahmins of Poona are more advanced than those of the surrounding districts. The age of marriage of girls among them is sufficiently high and would be somewhere near 15. Except the orthodox, Brahmins in general do not appear to believe in pre-puberty marriage and it may be said that they, including ladies, prefer post-puberty marriage, more for the sake of education of girls and of securing suitable husbands. In such cases, the age of consummation can be taken to be 15 or 16. Cases of

consummation before 13 or before puberty are therefore very rare amongst them.

99. In rural areas, there has been a tendency for the age of marriage to rise. It appears that the Depressed Classes are the worst offenders in this respect. They marry their girls at the age of 2, 4 or 6. The backward classes in general effect the marriages of their girls before 10. For the remainder of the population, the average age of marriage is between 10 and 11, while the Indian Christians marry at about 14 or 16.

100. The age of puberty in all the above-mentioned classes and castes varies between 12 and 15. In general, it occurs at about 13 or 14. Ordinarily, it may be said that consummation does not take place in any class or caste before puberty or before the age of 13. The practice of consummation before puberty or before 13 however appears to be common in the Kunbis, Sonars, Marwaries and Gujraties. Among others such cases are few and far between. It is said that in towns puberty occurs earlier and in rural areas later. Consequently, as the Garbhadhan ceremony, *i.e.*, consummation of marriage, takes place soon after puberty, the age of consummation is a bit higher in rural areas than in towns.

101. It may be noted that the orthodox base the practice of early marriage on religious injunctions. But it appears from the evidence that the practice of early marriage is due more to ignorance, custom and economic conditions than to any specific religious injunction in its favour. The people are disregarding other religious injunctions, and religion as such has a lesser claim on them.

102. In the Kanara and Bijapur districts, orthodoxy seems to have greater hold on the people. In the former, Halaki, Wakkals and Namdari castes marry their girls from 5 upwards as they believe in pre-puberty marriage. Among them the girls are temporarily sent to the husband's house for ceremonials and are brought back. Consummation however does not take place before puberty, *i.e.*, before 12 or 14. Among the Halakies, the age seems to be rising and it is coming nearer 12 or 13 and Garbhadhan ceremony is performed one year thereafter. In this tract the Havic Brahmins however marry sufficiently late, *i.e.*, at about 14 and the Saraswats marry between 14 and 18.

In the Bijapur district the Brahmins are about 1/10th of the population. The advanced wing of them, who are about 6 or 7 per cent. of the Brahmin population, marry their girls at about 14 and the rest at 12. Among these also consummation takes place after puberty.

103. As regards maternity, though there are cases of girl-mothers of 13, yet the average age for motherhood works out to be above 14 and the first child-birth may be said to take place between 14 and 16. It is found that girls who are mothers before the age of 16 suffer, though not immediately, in health. They contract diseases and become sterile and some of them succumb to death owing to poverty. The evidence however shows that the progeny of these girl-mothers is often healthy and does not suffer in health. It is possible that infant mortality in these tracts may be due to causes other than early consummation or maternity. It is however recognised that early marriage or consummation is an evil and an obstacle to the physical growth of girls and their education.

104. *Evidence.*—The evidence largely supports the fixation of the minimum age of marriage and the age of Consent at 14 years. Mr. J. R. Gharpure, an eminent lawyer and Sanskrit scholar, says that the Smriti texts relating to marriage were merely recommendatory and that if the age of marriage was fixed at 14 years, though he was personally in favour of a higher age, he did not think that there would be any practical opposition in his part of the country. Mr. P. Bunter, Public Prosecutor, Poona, Mr. K. S. Jatar, C.I.E., Retired Commissioner, C. P. and Berar and Mrs. Jankibai Bhat of the Seva Sadan, Poona recommend 16 for marriage and consummation. Mr. N. J. Shaikh, Assistant Sessions Judge, Dharwar, recommends 15; but almost all the other witnesses, including Rao Bahadur L. V. Parulekar, Pleader, Ratnagiri, Rao Bahadur R. R. Kale, Advocate, Satara, Mr. Dattatreya Ganesh Kale of Asoda, Mr. M. D. Karki, M.L.C. of Honavar, Khan Sahib Muhammad Ibrahim Makan, *ex-M.L.C.*, Mr. R. P. Pandit, Assistant Commissioner, Belgaum, support legislation fixing 14 years for Marriage and Consent.

105. Among the Karnatak witnesses, Mr. Asundi does not want any advance in the present Law of Consent in marital cases nor any Marriage Law but would have the

age of 16 for extra-marital relations. Mr. Shaikh (Mohammadan) is for a Marriage Law at 15 for girls. Mr. Karki thinks Marriage Law would not be acceptable to people, but would have the age of 16 for Consent in marital and 18 for extra-marital relations. Mr. Pandit is reluctant to have a Marriage Law unless medical opinion emphatically declares early maternity to be harmful. He does not want a higher age than 14 for extra-marital relations as that would be a hardship on the Devadasi community. Mr. Havaladar would like to retain the Law of Consent as it is and does not want any Marriage Law.

106. *Medical evidence.*—Dr. Ranken, who is in charge of the Missionary Hospital, Poona, states that there were 52 women in her Hospital, of whom 13 were about 14 years of age at the time of the first child-birth and eight of them lost half or more than half of their children; one was aged 14 years at the time of her first child-birth and had lost eleven out of twelve children; another of 14 had three full time children and they were all dead; fourteen girls were 15 years old at the time of the first child-birth, and five of them had no living child; and ten girls were 16 years old at the time of the first birth and six of them lost more than half of their children; while the remainder were 17 to 20 years old. She points out that except where the girls were being educated or were otherwise occupied, it was proper that the marriage should not be deferred beyond the age of 14 years. Dr. Mrs. Vakil, who is in charge of the King Edward Memorial Hospital, says that she had come across girls, aged about 15 or under, becoming mothers, and their babies were often weak and below the average weight and did not thrive because their mothers were weak and not able to take care of and nurse the children. Rao Saheb Seth Gulabchand of Dhulia relates an interesting personal experience relating to himself. He was first married when he was 12 or 13 years old to a girl of 8 who gave birth to three children in succession, two of whom died, and she herself died a few years later. He married a second wife who was 11½ years old. She gave birth to her first child at 13 and a second child at 15; and both the children died, and the wife died too. He says that his eyes were then opened, and he next married a girl who was 16 years old, and was still living. He also refers to a recent case in which a boy of 18 of the

Maheshwari Marwari community was married to a girl of 10, and the two were locked up in a room shortly after the marriage and the girl's cries attracted the notice of a pleader, who lived in the neighbourhood and reported the matter to the Police. He recommends the age of 14 years for Marriage and 16 years for Consent and feels confident that once the law is passed and its penal provisions widely published and proclaimed, it would be observed and respected.

107. Thus it will be seen that almost all the witnesses recommend that the age of Marriage should be fixed at 16 and that the age of Consent within marital relations should be on par with it, *i.e.*, 16. They think that the "Age of Marriage" law is necessary and will be more effective. In fact, the law of Age of Consent, so far as marital relations are concerned, can be dispensed with if there is a Law of Marriage. As regards the age in extra-marital cases almost all are agreed that it should be 18.

## GUJERAT.

108. *Conditions in Gujerat.*—In Gujerat the age of marriage varies with different communities and classes. In this respect the more advanced community seems to be Bramha Kshatriyas who marry their girls at 16 and above. Jains marry at about 14 or 15. Nagars and other Brahmins come next. Among them the marriage age does not appear to be below 13. These remarks apply more particularly to the town of Ahmedabad and the educated classes. Agricultural and artisan classes, Audich Brahmins, Ghanchies, Kanbies and Kolies marry early and so also do the lower classes of Muslims. The marriage age for the girls of these classes is anywhere between 4 and 10.

109. There is one peculiar custom among Kadwa Patidars which deserves to be mentioned here. Mass marriages of girls take place, irrespective of their ages, at periodical intervals once in 10 or 12 years, at the dictation of the priests in charge of a certain temple, but the practice is slowly dying out. Even girls of 3 and 4 are married in this Mass marriage, as, if not married then, they would have to wait till the next season, *i.e.*, for 10 or 12 years more. This naturally results in a large number of dispro-



portionate marriages. Another evil in the sphere of marriage age is that the caste Panchayats wield a great influence over the people. If once a partner is offered and rejected, the Panchayats ostracises the person rejecting, and he stands the danger of having no offer at all in future. As a result he has to marry his daughter at an early age.

110. *Age of puberty and consummation of marriage.*—The age of puberty for the Hindus seems to be between 12 and 14 and for Mohammadans a year later. In the early marrying communities and classes consummation takes place soon after puberty. As a rule, cohabitation before puberty does not take place except among Kanbies and Ghanchies and in cases where a widower marries for the second or third time. The latter evil seems to be much prevalent, as there is said to be a large number of marriages of this kind.

111. *Hindu evidence.*—The evidence taken in Gujerat is largely divided. Mr. Ambalal Sarabhai, Mr. Dahyabhai Ijatram, Mr. Bhogilal Sutaria, Mr. Dahyabhai Derasari and others recommend the age of 16 years for Marriage and Consent. Dr. Manilal Bhagat recommends 15 and Dr. G. R. Talwalker too considers 15 to be a safe age for maternity, though he is personally opposed to any legislation. Mr. Mangaldas Girdhardas Parekh, Mill-owner, Ahmedabad, states that he would prefer progress by educational and social propaganda, but legislation fixing the minimum age for Marriage and the age of Consent at 14 years would not be opposed, if adequate safeguards were provided against harassment. He further says that personally he would be willing if consummation was postponed for at least two years after puberty. Mr. Dowlatram Shah, President of the Ahmedabad Municipality, states that he would recommend the age of 14 years for marriage and 16 years for consummation, and that he had come across instances where cohabitation before puberty or soon after puberty had shattered fine constitutions or weakened the health of the girl. Mr. Ratilal Jivanlal Lakhia, Public Prosecutor, Ahmedabad, cites a case in the Kaira District where an Indian Christian girl aged 11 years was forced to sexual intercourse by her husband who was 25 or 26 years old, and the girl was injured. He thinks that if the minimum age for Marriage and the

age of Consent were fixed at 14 years, there would be less opposition. Mr. Dhruva, the Secretary of the Gujarat Reform Association, similarly cites instances where girls becoming mothers at 14 have either died or are wrecked in health, and he recommends legislation fixing the minimum age of Marriage and the age of Consent at 16 years.

112. *Women's evidence.*—Lady Ramanbhai Nilkanth, the Secretary of the Gujarat Ladies Club, states that she was in favour of fixing the minimum age of Marriage to the age of Consent at 16 years, that she was connected with various bodies at Ahmedabad which had been carrying on propaganda work and that she had got a petition signed by ten thousand women, in favour of the Sarda Bill, fixing the minimum age of Marriage at 14 years. She adds that a large number was even in favour of fixing the age of marital Consent at 16 years. Miss Bhagvat, Principal of a women's college and Honorary Secretary of the Gujarat Women's Conference, states that she was in favour of fixing the minimum age of Marriage and the age of Consent at 16 years, and that the children of early mothers were generally physically and mentally weak. She mentions the case of a girl aged 13 years, who had very difficult labour, and though she survived, she had had no second child since. She mentions another case where a girl about thirteen and some months old had to undergo an operation because she could not deliver without it, and that she had become an invalid since. Dr. M. K. Pandit, the Lady in charge of a Maternity Home at Ahmedabad, states that within three years, she attended 2,333 cases, and found that at the age of 14 the children born generally weighed 4 to 5 lbs., under 16 the children born weighed about  $4\frac{1}{2}$  to 6 lbs., and at 18 and over the children born weighed about 6 and  $6\frac{1}{2}$  lbs. and in some cases 7 lbs. The health and constitution of the parents are of course important factors in the matter more than age.

113. *Muslim evidence.*—Kazi Syed Nuruddin Husein of Broach, and Syed Badiuddin are opposed to any legislation; but Syed Nawab Ali and Mr. Ismail Chandrigar, Honorary Secretary, Anjuman-i-Islam, Ahmedabad, support marriage legislation fixing the minimum age at 14 years, if exemptions are permitted in suitable cases. He refers to a case in which a Mohammadan girl was deli-

vered of a child at the age of about  $12\frac{1}{2}$  with the result that the child died three days after birth, and the mother died twelve or thirteen days after delivery. Syed Nawabali refers to a case of a Muslim girl of a respectable family who was married at 12 and gave birth to a male child, found to be epileptic at the age of 14, and to a second male child who proved to be a cripple some years later and eventually died of consumption.

114. *Age of Consent within and outside marriage.*—The general opinion favours a rise in the age of Consent both in intra- and extra-marital relations and the ages suggested are 16 and 18, respectively. As a matter of compromise with the orthodox opinion, some witnesses suggest 14 or 15 for marital relations. The general opinion can therefore be taken to be in favour of 15. The medical opinion however is that 16 would be the minimum age for safe motherhood. It is recognised that the Consent Law, so far as marital relations are concerned would be as much ineffective as now, whatever the rise in age, if there is no minimum marriage age fixed by law. In fact, some say that the Consent Law can be dispensed with, if there is a Marriage Law. They suggest 14 for the marriage age—one or two only suggest 12 for it.

115. There does not seem to be any religious idea behind the age of marriage or consummation. These ages are governed by custom, the latter particularly by puberty. The Mohammadan witnesses recognised that fixing an age for marriage or consummation is not against religion. There are, however, suggestions made that if the age of marriage is fixed, there should be a system of exemptions in hard cases. The witnesses recommend an increase in the age, particularly on the grounds of health of the mother and progeny and the appalling maternal and infantile mortality. Tuberculosis is rampant in villages and at Ahmedabad among women. No doubt there are causes like congestion in Ahmedabad, the purdah system among the Mohammadans and the general poverty contributing to this calamity, but nevertheless, it is admitted that early consummation and motherhood is also a cause and an important cause of degeneration. It is also found that in the community and classes where girls are married late, mothers and their progeny are better in health.

## SIND.

116. The total population of this Province in round figures is 32 lakhs, of whom 8 lakhs are Hindus and the rest, with the exception of 4 lakhs, are Muslims, so that out of the total population, 25 per cent. are Hindus and 67 per cent. Muslims. The Hindus comprise the highly educated and cultured class of Amils and the mercantile communities of Lohanas, Cutchis, Baniyas, Khojas, Nagars and Pushkar Brahmins, who were originally natives of Gujerat or the United Provinces and have migrated to Sind in large numbers. Among the Muslims, there are Pathans, Makranis and Sindhis.

117. *Conditions in Sind.*—Among the Amils, there are no early marriages, the ordinary marriage age for girls being 16 and above. We were even told the case of a girl of 16 who refused to have her marriage consummated because that would interfere with her education. The Gujeraties as a class have kept up the custom of early marriage, the usual age being 10 to 13. Mr. C. A. Buch has collected some very interesting statistics from which it would appear that though early marriages are still prevalent, there is an awakening in the community and there is a decided desire for increase in the age of marriage to 16 and 18.

118. *Age of puberty and consummation of marriage.*—The age of puberty ranges between 13 and 15, Mohammadan girls attaining it one year later than their Hindu sisters. There is no doubt that there are many pre-puberty marriages and consummations, the general practice being to send the girl to reside with the husband soon after marriage, irrespective of the fact whether she had attained puberty or not. Two reasons are given for early marriage and early consummation, one being the paucity of girls and the other the absence of widow-marriages, with the result that widowers, who at an advanced age marry girls of tender years, are impatient for consummation.

119. Among the Mohammadans living in cities, there are no early marriages, the usual age for marriage being 16 and upwards (*vide* the evidence of Khan Bahadur Wali Mohammad Hasanali). However in the rural areas, there are early marriages, the ages varying between 12 and 15.

120. In all, 23 witnesses were examined by the Committee of whom 4 were Muslims including one lady Mrs. Tyabji, 7 doctors, among whom there were 3 ladies, one a Marwari, Rai Bahadur Shivratan Mohatta, two Parsis, the President and the Health Officer of the Municipal Corporation, and the rest were Hindus of different classes.

121. *Evidence.*—The evidence taken in Sindh largely favours legislation to fix the age of Consent and the minimum age of Marriage at 16 years. Dr. G. T. Hingorani, President, Karachi Hindu Sabha, Mr. Jamshed Mehta, President of the Karachi Municipality, Dr. P. T. Kothary, Civil Surgeon, Sukkur, Rao Bahadur Shib Ratan Mohatta, Haji Abdulla Haroon, M.L.A., Mrs. Tyabji and others recommend 16 for marriage; but Mir Ayub Khan, Barrister-at-Law, Dewan Bahadur Lal Chand Nawal Rai, M.L.A., Mr. D. D. Nanavati, I.C.S., Mr. Kalumal Pahlumal, and others are not prepared to go beyond the age of 14 years. Mr. Rup Chand Bilaram, Additional Judicial Commissioner, recommends the age of 12 years to appease the orthodox classes and refers to a case, *Crown versus Kalu*, tried by him in 1923 where the child-wife was taken by her mother to the Hospital for treatment, and the Medical Officer in charge reported the matter. At the Sessions trial, all the principal witnesses turned round, including the child-wife, who gave, it is said, an absolutely false explanation as to the injuries sustained by her, but the Jury accepted the statement made by her before the Magistrate as true, and the husband was convicted. The girl in that case was 11 years and six months old, and her husband was a sweeper by profession, aged 32 years. In 1928, he tried another case, *Crown versus Ismael*, in which the age of the girl was between 11 and 12 years, but the injuries received by her were not very serious. In 1924 there was a case at Hyderabad, *Crown versus Lakho*, in which a husband found to be 28 years old had sexual intercourse with his wife under 12 years of age, thereby causing her death. In 1925 there were two cases, one of which ended in an acquittal. The Muslims, with the exception of Mr. Haji Abaulla Haroon, M.L.A., were in favour of both the legislations and the latter too in the course of his oral evidence came round to the opinion that personally he was in favour

of legislation though he was afraid that the Maulvis and Mullahs would consider it an interference with religion.

122. Mr. D. D. Nanavati also refers to a case, *Crown versus Jan Muhammad*, tried in Sukkur in 1923 where a girl 11 years old was raped by her husband, who was about 16 or 18 years old. He mentions three other cases reported to him, in two of which the girl-wife was 13 years old and in the third 14 years old. In two of those cases, the girl-wife died at the first child birth, and in the third, the girl-wife had a deformed and stunted growth, due to premature or early consummation, and ultimately succumbed at the second child-birth. Dr. Miss Bolton refers to a case of ruptured perineum where the girl was 12 years old. Dr. Miss Newnes states that among Katchis the first babies were usually born at the age of 13 or 14 years, and that the babies of early mothers were generally weaker, and got all sorts of diseases easily. She refers to two or three marital cases, in which a girl-wife of 14 years had severe injury and her vagina was lacerated, and in the others the vagina was similarly injured and she asserts that such cases arrested the development of the girl and affected their nervous system.

123. From a consideration of the evidence on record, it is clear that there is a general consciousness in the community about the evil effects of early marriage and a desire to penalize marriages below 14 and to raise the age of Consent to the same extent. There is no doubt that due to economic causes and the spread of education and social reform, there is a tendency to raise the age, but the progress is neither uniform nor sufficiently quick and it is felt that the help of legislation should be invoked to accelerate the pace.

124. *Age of Consent outside marriage.*—Out of 23 Mohammadan witnesses only 4 were in favour of fixing the age of Consent in extra-marital cases at 16: the rest were all in favour of raising it to 18.

## MADRAS PRESIDENCY.

125. *Conditions in Madras.*—Madras is one of the Provinces where the custom of early marriage is least prevalent, a fact which may cause considerable surprise to those who have been impressed with the volume of opposition proceeding from that Province. According to the Census of 1921,  $24\frac{1}{2}$  per cent. of Hindu girls between the ages of 10 and 15 were married, a proportion which compares very favourably with the 64 per cent. of Bombay, 62·4 per cent. of Bengal, 59·6 per cent. of the Central Provinces and Berar,  $53\frac{1}{2}$  per cent. of the United Provinces,  $52\frac{3}{4}$  per cent. of Bihar and 35·5 per cent. of the Punjab. Assam shows a slightly higher percentage (27 per cent.) and the North-West Frontier Province is the only Province which shows a lower percentage (19 per cent.). Among the Muslims the same fact arrests the attention, the proportion being 12 per cent., practically the same as that of the North-West Frontier Province, the two Provinces with the lowest percentages in this respect. The non-existence of large classes practising early marriages and the influence of very large communities who practise late marriages, appear to have restored the Muslims of Madras to the normal habit of the community of late marriages which exists in the Frontier Province.

126. *Dravidian influence.*—The practice of late marriages in Madras has been accounted for by many witnesses to Dravidian influence and the differences which exist between communities in the South and North of the Presidency strongly support this theory. It may be stated as a general proposition that the Telugu population which has been less affected by Dravidian influence is more early married, if the phrase can be used, than the Tamil portion where such influence has been dominant.

127. It is not correct to state, as is so often suggested, that only select castes like Brahmins or Vaisyas observe the practice of early or pre-puberty marriage. In fact the high percentage of 24 is a sufficient proof that where these two communities form less than 4 per cent. of the population many others must have adopted or be following the custom of early marriage.

128. *Select Castes.*—The Kapus (a non-Brahmin caste) have a population of  $2\frac{1}{2}$  millions and have the highest percentage of girls in the whole of India married below the age of 5: 50\* girls out of every 1,000 are married at this age. The Telugu Brahmins marry 7 out of 1,000, the Tamil Brahmins 15 and the Komatis 5 below the age of 5. If girls between 5 and 12 are taken into consideration, we find that among the Kapus 338 out of 1,000 are married while 200 among the Telugu Brahmins, 62 among Tamil Brahmins and 177 among the Komatis are in the married state. The population of Tamil Brahmins is 500,000, of Telugu Brahmins 520,000 and of Komatis, about 400,000. The Mala (depressed class Telugu) has 107 of his girls in married state between the 5th and the 12th years, while his brother in the South, Pariyan (Adi-Dravida), marries only 38 of them. The former have a population  $1\frac{1}{2}$  million and the latter  $2\frac{1}{4}$  millions. These figures will enable one to understand the extent of the prevalence of the custom of early marriage and the reasons for its prevalence. It may be stated as a general proposition that except among the Brahmins and the Komatis, there is no argument based on religious injunctions or Shastras which can be advanced to justify pre-puberty marriages in other castes. They are merely in the clutches of inexorable custom which operates as rigorously among them as religious sanction elsewhere.

129. *Age of puberty.*—The age of puberty is between 12-14, the large majority attaining it at 13. Cases of puberty at 11 are not uncommon. There is not much difference in the age in different communities, though it is stated on all hands that among Brahmins the average age is a year less than in other communities. This proves the influence of early marriages on the age of puberty.

130. *Consummation of marriage.*—Pre-puberty consummations are not common in this Province. Such cases do occur among the early marrying communities. The practice of consummation soon after puberty is however extensively prevalent among them. Witnesses have spoken of their being postponed to 6 months or even a year, but from a careful consideration of the evidence it is clear that this healthy practice is confined only to a few families. To refer to only a few of the statements, Mrs. Rajeswaramba states



that consummation generally takes place within 16 days of puberty. Mr. Mantha Suryanarayana, a Brahmin gentleman and former member of the Madras Legislative Council, states that "Garbhadhan ceremony is performed among Brahmins and Vaisyas on the fourth day after puberty as a rule and marriage is consummated that night". There is no reason to doubt that early consummation generally follows early marriage and that in such cases the law of the Age of Consent in most cases is violated.

131. We may now examine the evidence. The Committee has been naturally anxious to get the view point of orthodoxy in Madras, as both from the debates in the Legislative Assembly and from the agitation in the press it was led to expect that the greatest opposition to legislative advance would come from Madras. The work of the Committee attracted the largest attention in the Province and no fewer than 300 out of about 1,200 written statements received by the Committee were from Madras. The Brahmins who represent the orthodox opposition availed themselves of the opportunity and a large number of the statements were from them. In selecting witnesses for examination before the Committee we have given preference to Brahmin witnesses and nearly 50 out of 80 witnesses examined by the Committee were Brahmins.

132. *Attitude of Brahmins towards post-puberty marriage.*—The general impression that Brahmins in Madras are opposed to post-puberty marriages and do not realise the evils of early consummation is entirely incorrect. Many of them have shown a desire for reform and some have actively shown their faith in it by having late marriages celebrated. The question of post-puberty marriage has been engaging the attention of the community for over two decades. A conference of Pandits was held at Conjeeveram in April 1912 at which the opinions of Pandits were taken on this question. A detailed reference to their opinions will be found in Chapter VI. In December 1912 the Thiruvadi Parishad also considered the proper age of marriage and the decisions of the Parishad have also been referred to in Chapter VI. In 1914 the Hon'ble Mr. V. S. Srinivasa Shastri introduced a bill in the local Legislative Council validating post-puberty marriages among Brahmins but the agitation against it was so great that the measure was withdrawn.

This agitation should not however be understood to have proceeded from those orthodox Brahmins who considered pre-puberty marriage essential. Among the most vigorous opponents of the measure were those who were already celebrating marriages after puberty and who therefore felt that it was unfair to cast a doubt on the legality of such marriages. The advance in years has brought about some improvement in the age of marriage among a few educated families. There is definite evidence that either on account of economic causes, the difficulty of finding suitable husbands or paying the required dowry or from a consciousness of the risks and dangers of early marriage, such post-puberty marriages do take place; but the force of social opinion in the community is seen from the fact that in the majority of such cases, the attainment of puberty by the girl is not revealed.

133. *The extreme orthodox point of view.*—The exponents of the extreme orthodox point of view are definitely against fixing any age of marriage and would in no case advance beyond the age of puberty. The religious injunction on the point is according to them inviolable. Pandit U. P. Krishnamachariya, an English educated and learned Pandit, may be taken as representative of the extreme orthodox section. He is of opinion that pre-puberty marriage and consummation before the second menstruation are essential for the preservation of all that is best in Hindu society. Not only does he believe that the religious texts have prescribed such a course, but he is clearly of opinion from an examination of the state of society in other countries, that the Hindu system is the best in this respect. The witnesses of this school deny that there are any evil consequences resulting from early marriage and consummation. On the other hand, the intellectual predominance of the community is a strong argument against such a theory and there are many instances of early married women living to a long and happy age without any detriment to their physique or that of their progeny. Mr. K. G. Natesa Shastri, Editor, *Kalpadruma*, expresses the same view and would not have any law fixing an age for marriage. Dewan Bahadur T. R. Ramachandra Iyer, of the Madras Bar, who has played a leading part in marshalling orthodox opposition to Sarda's bill, would not have much regard for medical

opinion if it says that a girl is not fit for safe motherhood before 16, and for the most convincing of all reasons that "In the case of Brahmins, from time immemorial, for the past thousand years, marriages have continued to take place before puberty and consummations after puberty and the Brahmin community is physically, morally, intellectually and spiritually as good as, if not better than, any other community". He thinks that "fixing a minimum age of Marriage is altogether unwelcome in this part of the country while postponing consummation may not be so serious a grievance". To the same effect is the evidence of Messrs. T. S. Balakrishna Iyer, T. S. Ramaswami Iyer, K. Ramaswami Iyer, K. Rama Iyengar, Rai Bahadur T. M. Narasimhacharlu and C. V. Venkataramana Iyengar, M.L.C. On the other hand, there are some witnesses who would make an advance in the age of Consent, but would oppose marriage legislation beyond a certain pre-puberty age. Dewan Bahadur T. Rangachariar thinks that public opinion is advanced enough to raise the age of Consent to 14 but would not go beyond 12 with reference to the age of Marriage. Mr. M. K. Acharya, M.L.A., would prohibit consummations of marriage before 14 by giving the offenders only preventive punishment and would prohibit betrothal marriage before the girl is 10 years old. Justice C. V. Anantakrishna Iyer would have the age of Consent raised to 14, but is doubtful whether the age of Marriage should be 11 or 12. Mr. N. Srinivasa Acharya, Vice-President of the All-India Brahmana Maha Sabha and a prominent leader of orthodox views, thinks that if legislation must come, it may be by revision of the Age of Consent law fixing 14 as the minimum. It may be noted that witnesses of the latter group do not believe that there is any mandatory provision in religious texts enjoining consummation within 16 days of the first onset of menses. They speak of consummation being postponed by the most orthodox people to periods ranging from one to four years.

134. But there is a large group of Brahmin witnesses who feel that a Marriage Law is essential and that the age of Consent should be advanced. The Hon'ble Dr. U. Rama Rau, from his wide medical experience, would have a law penalizing marriages of girls below 15 and would fix the age of Consent at 16. Dewan Bahadur Visvanatha Sastri would have both laws and would recommend that

marriages before 14 be declared invalid. Messrs. K. R. Karant, M.L.C., P. K. Seshadri Iyenger, A. Srinivasa Iyenger and R. Ayyakutti Ayyangar, Advocates, would have both laws, fixing 14 as the minimum. Other witnesses would resort to more radical remedies. Mr. S. Ramaswami Iyer, Mr. M. Vedachala Iyer of Chingleput and C. Veeraraghava Iyer would have the age of Consent at 16. The two former would fix the age of Marriage at 14 while the latter would go up to 16. It is unnecessary to refer to more witnesses.

135. *Women's evidence.*—The ladies are practically unanimous in requiring both laws. Most of them would advocate 16 in both cases, in consonance with the resolution of the Women's Association on the subject. Mrs. N. Subba Rao, Mrs. Madhava Rao, Mrs. Malati Patwardhan, Mrs. Manjeri Rama Iyer, Mrs. Bhagirathi Sri Ram. Lady Sadasiva Iyer, Sister Subalakshmi Ammal, are a few of the ladies who have given striking evidence on the subject. Srimathi Srirangamma and a group of five other Brahmin ladies in giving a pathetic account of the condition of girl-wives advocate 18 as the minimum age in both cases. An attempt has been made by some witnesses at discrediting the evidence by describing the witnesses as Theosophists and reformers but apart from the fact that the description is incorrect, we are unable to understand how that fact vitiates the evidence.

136. *Evidence in Andhra Desa.*—The evidence of witnesses in the Andhra Desa is less free from the varieties which have characterised that of the Tamil Nadu. The religious point of view is much less in prominence. But it has to be noted that the practice of early marriage and early consummation is more widely prevalent among certain castes. The influence of Aryan civilisation is said to be greater here. The activities of social reformers have been more felt here than in the South. In fact the Telugu country claims to be the pioneer in such matters and the name of the late Mr. Veeresalingam Pantulu, a Telugu Brahmin and pioneer of social reform activities, is well known in Madras. In spite of this it is significant, and may be noted by those who rely on mere reform to remedy such evils, that the prevalence of the custom of early marriage is greater in this tract. It has however to be admitted that most of the witnesses have favoured reform,

a fact which shows that whatever the practice may be, the thought of the community has progressed in the direction of late marriages. Dewan Bahadur C. Venkatachalam Pantulu and Mr. P. Lakshmi Narasimham are among the few who oppose legislation on either point. On the other hand a number of other witnesses, Messrs. Mantha Suryanarayana, D. V. S. Prakasarao, G. V. Ramamurthi, Narasimham Pantulu, A. Parasurama Rao, M.L.C., Drs. A. L. Narayan and T. S. Thirumurthi, strongly support marriage legislation and raising the age of Consent.

137. It may be stated that though there is considerable opposition from the orthodox Brahmins, there is also a very fair section of them who are for an advance by law and that the volume of support is greater in Andhra Desa than in the Tamil Nadu. The custom of early marriage amongst Vaisyas has been already referred to. The practices of this community are in close conformity with those of Brahmins. But a new awakening is coming amongst them. Caste conferences have been held in Salem and Guntur where the Vaisyas have resolved that the minimum age of Marriage should be 14. The witnesses before the Committee, notably Mr. Sami Venkatachalam Chetty, M.L.C., a leading member of the community, have advocated a marriage law at 14.

138. *Non-Brahmin evidence.*—The Non-Brahmins are, almost without exception, in favour of such legislation. The desire in some communities to follow the example of the Brahmins is undeniable, however much it may be deplored. The cases of Kapus and Kamsalas have been referred to. In fact, the evil is spreading and some Brahmin witnesses have suggested that special legislation affecting these classes may be passed as in their case there are no religious injunctions. It is unnecessary to refer to the names of Non-Brahmin witnesses, where the evidence is so unanimous.

139. *Muslim evidence.*—The Muslims form a very small percentage of the population and the practice of early marriage is very limited among them. The Moplahs of Malabar form nearly one half of the entire Muslim population and witnesses have stated that the Moplahs have the custom of early marriage. In a few sects such as the Dudekulas elsewhere, it is equally prevalent. Some of the Muslim witnesses have opposed legislation because the com-

munity is not affected by it. But the more discerning among them who have noted the prevalence of the custom like Khan Bahadur Mohd. Bazlullah Sahib, C.I.E., Director of Industries, and Mr. Zynuddin, District Judge, have advocated both laws.

140. It remains only to be added that the Madras Legislative Council unanimously passed a resolution in 1928 recommending 16 as the minimum age of Marriage.

141. As regards cases of seduction and abduction, it appears that Oriya girls below 18 are seduced in large numbers and taken to other Provinces. Likewise, there is some trouble regarding prostitutes and Devdāsies also, and it is believed that the law of Age of Consent would not be effective with regard to them, even if the age is raised to 16. Witnesses therefore recommend 18 as the age for extra-marital offences. It may however be noted that there are a few witnesses who do not want the present extra-marital age to be raised at all. Their ground is that a rise will lead the girls to assert themselves and to go astray and cause hardship to them.

**ASSAM.**

142. *Conditions in Assam in General.*—The total population of Assam is nearly eight millions of whom Hindus are 4,360,000 and Muslims 2,220,000.

This Province does not feature prominently when the statistics of early marriages are examined. In fact the North Eastern Frontier Province of Assam and the North West Frontier Province are the only two Provinces in India where there are practically no child-marriages below the age of 5. An equally satisfactory state of affairs is not however revealed when the later age periods of 5 to 10 and 10 to 15 are taken into consideration. Taking all religions, the percentage of married girls between 10 and 15 in 1921 was 25·9. The number of married girls between 10 and 15 among Hindus in 1921 was 54,449, being 27 per cent. of the total number and among Muslims 38,828, being 34 per cent. of the total. But conditions vary so much in different parts of the Province that an inaccurate idea will be conveyed by these averages.

143. *Conditions in Brahmaputra and Surma Valleys.*—Customs differ widely among the Hindus in the Brahmaputra Valley and in the Surma Valley. In the former, if the district of Goalpara is excluded, the practice of early marriage below the age of 15 is not considerable. The Brahmins and Ganaks are the two castes who celebrate pre-puberty marriages. Excluding Goalpara, only 142\* girls between 10 and 15 are married out of every 1,000. In Goalpara District, however, 426 girls of that age are married. It is interesting to note that Muslims in this valley are very much addicted to the practice of early marriage, their numbers approximating those of Hindus in Goalpara; 42 girls between 5 and 10 and 473 between 10 and 15 are married. The total number of Muslims in this valley is about 600,000. In the Surma Valley 448 girls are found married between 10 and 15 among Hindus and 295 among Muslims.

144. *Early marriage a custom.*—The Brahmins of the whole Province form a population of 156,000 and the same fact is noticeable here as in other Provinces, that early marriage is prevalent in many castes and communi-

ties, which are not influenced by religious texts prescribing such a course. In fact even among the Brahmins of Assam, if the evidence of Mr. N. C. Bardoloi, M. L. C., himself a Brahmin, is to be accepted, it is not so much a case of following the Shastras as of following the custom which is prevalent. Some of the castes, lowest in the social scale, follow the practice to a larger extent than even the Brahmins. The Namasudras, the Patnis, the Barius, the Telis and Bhuimalis have been given as some of such castes and no question of Shastric injunctions can arise in their case.

145. *Age of puberty and Consummation of Marriage.*—Age of puberty varies from 12 to 14. Some witnesses declare that it even goes up to 16. *Garbhadhan* is still mostly practised. It takes place soon after puberty and precedes consummation. Amongst some educated people it is falling into disuse. The age of maternity among the early marrying communities appears to be 14.

146. *Hindu Evidence.*—The Hindu evidence is divided on the question of fixing a minimum age of marriage. Almost all witnesses however agree to raising the age of Consent, the majority favouring 15 years. Mr. Bardoloi M. L. C., thinks that the Brahmins would object to such a law and that the people are generally under the influence of *Gurus* or *Goswamis* who are the religious heads of the people. Pandit Surjya Kumar Tarkasaraswati would modify the present law making puberty the sole test and age of Consent. Mr. T. R. Phookan, M. L. A., would have legislation on both subjects and would advocate 16 as the minimum age. Mr. Promode Chander Datt thinks that fixing a minimum age of Marriage is more welcome and would have the age of Consent at 16. The Secretary, Bar Association, Silchar, in suggesting 14 states that fixing the minimum age of Marriage would be more effective and in consonance with public opinion. His Holiness Sri Sri Garamuriya Goswami, one of the four religious heads of Hindus, who is carrying on a propaganda for late marriages, thinks that three years should elapse after puberty before consummation but would rely on education and exhorts Government to mobilise all its strength and energies towards imparting education.

147. His Holiness Sri Sri Adhikari Goswami of Dakhinpat, Satra, is in favour of raising the age of



cohabitation and cannot support the Age of Marriage against Shastric injunctions for Brahmins. Messrs. H. K. Halder and Bipin Chandra Deb Sarkar would not have either of the laws under any circumstances, though the former and Mr. Debi Charan Ray state that cohabitation before puberty is common among the lower classes such as Patnis and Nathis. Rai Bahadur Nagendra Nath Chowdhury, a former member of the Indian Legislative Assembly and of the Assam Legislative Council, a Bengali Brahmin, considers both laws essential and supports the proposed legislation.

148. *Muslim Evidence*.—The Muslim evidence on the point is generally against fixing an age for Marriage. The personal opinion of several witnesses is in favour of such a law but they consider that the *fatwas* of *Mullahs* would influence the people to protest against such a measure. Some of them however agree to an Age of Consent. The witnesses state that there is no injunction in Islamic law favouring or encouraging early marriage or consummation. But a Law of Marriage would curtail the liberty now extended to them and that is the main ground of objection. Mr. Abdul Matin Chowdhury, M. L. A., Mr. Arzan Ali Muzumdar, M. L. C., and Mr. Muhammad Abdullah, give evidence to this effect. But they are for raising the age of Consent. Mr. Chowdhury suggests 14, while the others would have 15. Sir Syed Muhammad Sadulla recommends the preaching of contraceptive methods and thinks frequency of births is the real evil. He is against both the proposed laws.

149. *Opposition to Advance*.—The Brahmins and the Muslims object to legislation on religious grounds and on the ground of the Government having no right to interfere in social matters. This opinion amongst Muslims was expressed by Mr. Abdul Matin Chowdhury and amongst Brahmins by Pandit Surjya Kumar Tarkasaraswati.

150. *Women's Evidence*.—The ladies who appeared before the Committee, Mrs. Sharda Manjuri Dutt, Mrs. M. K. Gupta, Mrs. Chandarprabha Sakigane, Mrs. H. Bhagur and others strongly advocated 16 as the age of Marriage and Consent.

151. The evidence shows that while the evil of early marriage and early consummation is not widely prevalent in the Province, the opinion of several of the witnesses is

against a Law of Marriage and that of the large majority is in favour of an advance in the age of Consent.

152. *Age of Consent Outside Marriage.*—Abduction and seduction are not very common in this Province. In fact, it is less than anywhere else. The witnesses recommend 18 for the age of Consent.

153. *Custom of union before Marriage.*—One peculiar feature with reference to some of the classes brought out in the evidence requires special mention. Messrs. M. K. Gupta, N. C. Bardoloi and Sir Saiyad Muhammad Sasdulla refer to a tribal custom among some classes according to which in April on the Bengali New Year's day there is a dance at which unmarried girls and young men join. At that time some of the couples elope and live for three or four days in the jungle presumably as husband and wife. A complaint of seduction is filed by the father of the girl but after the couple's return the case is compromised and marriage is performed.

## BENGAL.

154. *Conditions in Bengal.*—In regard to this enquiry, the Province of Bengal presents many striking peculiarities and its conditions are in some respects unique. It may be remembered that legislation raising the age of Consent in 1891 was due, almost entirely to the serious state of affairs which was revealed in that Province. The debates during the passage of the bill deal mainly with the evil of early marriage in Bengal, though there may have been more than a suspicion that in other parts of India also, the practice was to a certain extent prevalent. The enquiry of the Committee shows that there are other Provinces where, among certain communities, a similar state of affairs exists. But nowhere except perhaps in the Central Provinces and Berar and in Bihar and Orissa, which once formed part of the Province of Bengal, have we come across a Province where practice of early marriage is so widely prevalent. Nor does the state of evidence in Bengal show that there has been any appreciable improvement, except amongst the few educated classes, since 1891, when the law was first amended.

155. *Hindu and Muslim girls between 10 and 15.*—Taking the age-period 10-15,\* we find that in 1901, 60 out of every 100 girls were in a married state, while in 1911, the number of girls found married was 60 and in 1921, it was 59½. It is also significant that there is very slight difference in this respect between Hindus and Muslims. In fact, one of the peculiarities of the Province is the existence of the practice of early marriage among the latter, in almost as intense a form as among the Hindus. Taking the same age period of 10-15, we find that in 1901, 65 out of every 100 girls were in a married state among Hindus as against 59 among Muslims. In 1911 the figures were 71 and 60 respectively and in 1921, they were 62·4 and 52½. These figures tell their own tale of early marriages, as will be seen later from an examination of the evidence of early consummation, among both the major communities of the Province. When it is further remembered that the Muslims of Bengal are 25 millions while the total population of the community throughout India is 68 millions and that it forms 42·41 per cent. of the Muslim

\* *Vide* Appendix V—D.

population in British India, we have a better idea of the extent to which the Muslim community is subject to the practice of early marriage.

156. *Girls below 10.*—Nor does an examination of the figures of married girls at ages below 10, both among Hindus and Muslims, disclose a more satisfactory state of affairs. In 1911, 6 out of every 1,000 girls among Hindus were in a married state below the age 5 as against 8 in 1921. Among Muslims 4 out of every 1,000 were in a married state in 1911 as against 9 in 1921. Taking the age-period 5 to 10, it is found that among Hindus, 126 per 1,000 were in a married state in 1911 as against 91 in 1921, and among Muslims 11 were found married in the former year as against 64 in the latter. These figures taken from the Census Reports give a fairly rough indication of the extent to which the age of Marriage of girls has risen, by voluntary effort or by force of circumstances.

157. *Select Castes and Sects examined*—(a) *Hindu.*—But a more interesting, if perhaps pathetic, state of affairs is revealed when select castes are examined. It is found that the general averages given above are due to castes which practice late marriages, and that the custom of early marriage is even more extensively practised in some castes than the averages would indicate. Among the Brahmins, 4 in every 1,000 girls were married before the age of 5, both according to the Census of 1911 and that of 1921. In the age-period 5 to 12, 160 girls were found married in 1911 and 108 in 1921 out of every 1,000. The rise in the marriage age is thus seen to be very slow during the decade. It may be contended that these are classes among whom pre-puberty marriage is ordained by religion, and in fact during our enquiry we have constantly been told by witnesses that such marriages are the result largely of religious injunctions. The census reports do not however confirm this theory. In Bengal the Chasi Kaibarta class is the largest caste among the Hindus, its population being over 2 millions. The members belong to the Depressed Classes and cannot be affected so much by texts of Manu, Parasara or Raghunandan, and yet the custom of early marriage is prevalent among them to a greater extent than even among Brahmins. In 1911, 12 out of every 1,000 girls were found married before the age of 5 as against 11 in 1921. Again 259 girls between 5 and 12 out of 1,000

were in a married state in 1911 and 216 in 1921. The custom is prevalent to nearly the same extent among the Namasudras, who form the next largest class in the Province. They are also not guided by religious texts in these matters, but a more inflexible guide and disciplinary force for them is custom.

158. (b) *Muslim Sects*.—Nor are the Muslims of Bengal in a position of vantage at any of these age-periods. The Saiyads, who are the most educated and enlightened section of the community, observe practices in this regard which approximate very closely to those of Brahmins. In 1911, 7 out of 1,000 girls below 5 years were married and in 1921, the figure went up to 12. Between the ages of 5 and 12, 123 girls were found married in 1911 as compared with 105 in 1921 while at the age-period 12—15, 707 were in a married state in 1911 and 553 in 1921. The practice is more extensively prevalent among other sects. According to the census of 1911, 20 girls below the age of 5 and 314 between 5 and 12, out of every 1,000 were in a married state among the Ajlafis (Muslims). Among the Jolahas, the respective figures were 11 and 277. Among the Kulus, 5 girls were married before 5 years and 194 between 5 and 12. Even the Moghuls and Pathans are not far beyond the reach of the custom as 136 and 161 girls are married between 5 and 12 years of age in each of these sects. The Sheikhs who form the predominant population numbering nearly 23 millions are nearer the Jolahas than the Moghuls or Pathans in observing this custom.

159. *Early Consummation*.—The evidence before the Committee confirms the inference which may be drawn from the census figures. It is admitted on all hands that the practice of early marriage is widely prevalent throughout Bengal. Witnesses may praise or condemn the system and may refer to the advantages or disadvantages accruing from it, but the fundamental fact is undeniable, nor is it questioned, that early consummation almost inevitably follows early marriage amongst both Hindus and Muslims. Nor are the deleterious consequences of such early consummation seriously challenged except by a few witnesses, among whom are, surprisingly enough, some medical men. It is also established from the evidence that pre-puberty consummations are common and that violations of the Law of Consent occur in many cases. The practice of *Gaona*,

according to which the girl-wife is not sent to the husband's family till some time after marriage and generally after puberty, does not prevail in Bengal, with the result that soon after marriage, at any age, the girl lives with her husband and consummation invariably follows on attainment of puberty irrespective of the age of the girl.

160. *Muslim Evidence*.—It is in the light of these facts that the evidence of witnesses has to be examined. The Muslim evidence may first be considered as it presents fewer difficulties. A few witnesses regard the raising of the age of Consent or the fixing of an age of Marriage by law as opposed to religion. Mr. Hajee Ismail Chowdhury, M. L. A., states that among Muslims, puberty is the only test and consummation takes place irrespective of the age of the girl. The witness is personally in favour of checking the evil having a Law of Marriage, but would not support it, even if medical opinion regards 16 as the proper age of consummation, as the opinion of the community is against it. Quazi Zahirul Haq of Dacca admits that girls are married at all ages, even at 2 and 3, among the lower class of Muslims, that immediately after puberty, which happens at 11 or 12, the girl is sent to the husband's house and that he is aware of girls who became mothers at 13 or 14, but he will oppose all Consent and Marriage legislation as it interferes with the liberty granted by God's law. To the same effect is the evidence of Khan Bahadur K. A. Siddiqui, who strongly urges the reduction of the present age of Consent to 11. The witness states that cohabitation is not uncommon in lower classes before puberty and is considered essential by all, including the advanced section, soon after puberty. He is personally aware of 4 or 5 girls who had cohabitation at 10 and 11 and became mothers. He is however deadly against fixing by law an age of Marriage. Khan Bahadur Maulvi Ekramul Huq, M. L. C., is also against any legislation, though he admits that girls below 13 do not escape the consequences of marriage. He recites the case of a girl who was married at 11 years of age and gave birth to a child in about a year, with the result that the child expired and the girl lost her health for good. These witnesses represent the orthodox section of the community.

161. All other witnesses are strongly in favour of an advance. Mr. Nur Ahmed, Chairman of the Chittagong

Municipality, suggests 15 or 16 as the age of Consent, would favour Marriage at 14 and feels that the fixation of a minimum age of Marriage will more suit public opinion. Khan Bahadur Mohammad Ismail, M. L. C., is strongly of opinion that consummation of marriage would be safe only after the completion of the 16th year and urges the need for propaganda explaining the evils of early consummation. Witness was in a position to cite any number of cases that had come to his notice where the girls had broken their health by cohabitation before or immediately after the attainment of puberty. Mr. Azizul Haq, M. L. C., is personally in favour of a bill like that of R. S. Harbilas Sarda and feels that every well-wisher of the country will welcome it. He thinks that fixing a higher age of Consent for marital cases will be in consonance with public opinion. He is of opinion that nothing in the Muslim Scriptures is against a Law of Marriage and that Muslims will not be affected at all, because public opinion amongst them is confined to the opinion of the few who can be persuaded. Mr. M. Kazimuddin Ahmad would have the age of Consent raised to 16. Maulvi Mohammad Quassim would have the age of Consent beyond 16, would like to strengthen the penal law and thinks that marriage ought not to be performed before the girl has reached the 14th year. According to the witness, cohabitation before and soon after puberty occurs in many instances. He is clearly of opinion that a Law of Marriage would not be against Muslim Scriptures. Mr. Jalaluddin Hasimi, M. L. C., states that cohabitation before puberty does exist though only among muslims of lower social order, would have girls married after 16 and thinks Marriage legislation would be more effective. The minimum age of Consent according to him should be 15 years. When asked if the Maulvis and Mullas will consider the enactment of such a law as an interference with their religion, witness stated that he did not think so and that in all the papers conducted by Muslims, except one, they have raised no objection. The arguments of the paper which objected were met with. Khan Bahadur Maulvi Wasimuddin Ahmed, Chairman, District Board, Pabna, states that cohabitation before puberty is to be found amongst the low classes and that cohabitation before 13 is not infrequent. During his experience, professional and otherwise, he came across many cases of cohabitation before puberty

with the consequence of permanent injury to the health of the girl. In many cases girls suffered severe injuries and the witness knew of 3 or 4 cases in which girls of 10 or 11 years had to undergo forcible cohabitation resulting in profuse bleeding, and injuries to private parts which took time to heal. The witness was of opinion that there should be legislation fixing the minimum age of Marriage at 13 with exemptions in hard cases. Maulvi Abdus Sabhan Muhammad, Deputy Magistrate, states that cohabitation often takes place below 13 as girls often attain puberty below that age. The Law of Consent would be more in consonance with public opinion though he thinks a Law of Marriage would be more effective. Mr. A. F. M. Rahman, I.C.S., proposes prohibition of marriages of girls below 13. The witness thinks that fixing a minimum age for girls would be more acceptable. Public opinion would revolt against this also in the beginning but it will subside soon, and the law would help to educate public opinion in the long run. All things considered, the witness preferred to rely on strengthening the penal law, particularly by fixing the minimum age of Marriage. Mr. Mahmood Ali, Police Magistrate, thinks that penal legislation fixing a higher age of Consent would be more in consonance with public opinion than a Law of Marriage. Mr. Khondkar Ali Taib, Deputy Magistrate, Myrmensingh, states that in his experience child-marriage is more prevalent in Bengal than in any other Province. There may be opposition to legislation but no importance need be attached to it as the people will gradually appreciate the improvement. Cultivating and labouring classes marry their girls during childhood to persons who are fit to be their fathers, with the result that abnormal consummation invariably takes place without any consideration of the disastrous consequences the witness, however, thinks that the Law of Consent will be sufficient for the present, and the Law of Marriage may not be advisable in the present political atmosphere. Mr. Nasiruddin Ahmed, M. L. A., thinks that the better policy would be to fix the minimum age of Marriage at 14 and raising the age of Consent to the same age. Cohabitation is common within the marital state soon after puberty which may happen in some cases before the girl completes 13 years. Fixing the minimum age of Marriage appears to be more in consonance with intelligent public opinion. Khan Sahib Maulvi



Safar Ali, Chairman, Noakhali Municipality, forwarding the opinion of the Municipality, says that, except in cases of husbands who are highly educated and are of advanced ideas generally, a husband would have cohabitation with his married wife since the time of marriage, irrespective of the consideration whether the girl had attained puberty or not. They (the Municipal Committee) are for legislation fixing a minimum age for Marriage as a more effective remedy than raising the age of Consent, and consider that fixing a minimum age for Marriage would be in consonance with public opinion.

162. This completes the examination of the evidence of all the Muslim witnesses of Bengal who have either appeared before the Committee or have submitted written statements. It has been considered necessary to consider this evidence in detail as the Province contains the largest percentage of Muslim population in India, and as there was some misapprehension as regards the extent of the evil and the state of opinion on the subject. From this evidence it is clear that Muslim opinion in Bengal is generally in favour of a Law of Marriage and an increase in the age of Consent, and according to that opinion neither of the laws is against the Muslim scriptures.

163. *Hindu Evidence.*—The Hindus of Bengal observe the practice of early marriages to a greater extent than the Muslims. The age of puberty among girls is between 11 and 13 and generally in the 12th year. It does not differ in different communities. The average age of Marriage among all communities in Bengal is stated to be  $12\frac{1}{2}$  years according to the latest census report and it may therefore be presumed that 12 is about the average age of marriage among Hindus. 622 girls out of 1,000 are found in a married state between the ages 10—15. Taking the figures of all religions we find that the age of marriage has gone up very slightly. In 1891 there were 827 unmarried girls between 5 and 10 out of every 1,000 while in 1921 there were 891 showing an increase of 6·4 per cent. for the thirty years. In the age-period 10—15 there were 372 unmarried girls in 1891 as against 494 in 1921 showing an advance of 12·2 per cent. for the three decades. But even this increase does not give a correct indication of the number of girls who are unmarried at the critical ages of 15 and 16. The writer of the Census

Report, 1921 observes " In Bengal 9 out of 10 girls have been married before the age of 16 when none at all have yet been married in England ". A realisation of this significant fact may help a more correct appreciation of the situation by those who feel that an Age of Consent law in marital relations is a singular innovation in this country.

164. *Agitation in 1891.*—Before dealing with the evidence of Hindu witnesses, it will be useful to refer very briefly to the agitation in Bengal which preceded the bill of 1891. Many of the prominent leaders of public opinion, gentlemen who held high positions in the Government services and landed magnates ranged themselves against the measure for a variety of reasons. Some felt that though they were personally in favour of it the public were decidedly against it; some had objection to the Government, as then constituted, passing such a measure, while a few reflected the opinions of those who were opposed on religious grounds. But even then, there were many who advocated a reform far in advance of what was proposed. Sir B. L. Gupta and Mr. Mano Mohan Ghose, to mention only two names, were emphatically for a law declaring marriages below a certain age invalid, the former suggesting 14 and the latter 12 as the minimum age.

165. *Growth of Public Opinion.*—The growth of public opinion on the subject since those days bears no comparison to the extent of the evil which still prevails and only indicates how difficult it is to eradicate it by purely social propaganda. The Reformer has been at work in Bengal at least as actively as elsewhere. The Brahmo Samaj is the most marked revolt against some of these customs. Other organisations also have been working within the Hindu fold to bring about the much needed reform. The Namasudras, among whom early marriage is so widely prevalent, resolved in their conference, so early as 1908, that the minimum age of Marriage should be ten years. Other caste and communal conferences have tried by voluntary efforts to eradicate the evil but the advance is so small and so slow, that most of the witnesses who appeared before us have despaired of any appreciable change merely through social reform.

166. *Religious point of view.*—The religious point of view is put forward by a few witnesses. Mahamah-

padhyaya Asutosh Shashtri, *ex-principal*, Sanskrit College, Calcutta, admits that cohabitation is common soon after puberty, which may be at any time between 12 and 14. The witness admits that it will be better for a girl to attain maternity after sixteen as it is an evil at an earlier date, that the higher the age the better it would be according to Ayurvedic doctors, and that 13 or 14 is the proper age for marriage. The witness is not for early marriage and personally does not encourage it; but it is sanctioned by religion and if any body performs it, he should not be interfered with by legislation. The injunction regarding pre-puberty marriages is in his opinion recommendatory. Mahamahopadhyaya Krishna Charan Tarkalankar states that consummation takes place soon after puberty, irrespective of age, and would regard the attainment of puberty as the only guide for consummation. Mahamahopadhyaya Durga Charan is for the modification of the present law so that consummation may not be criminal even if the girl is below 13. Cohabitation takes place soon after puberty, whether before or after 13. Mahamahopadhyaya Pandit Panchanan Tarkaratna, who had strongly opposed the proposed legislation in 1891, is of the same opinion still and advocates consummation within 16 days of the first menstruation. The witness admits that cohabitation takes place before the girl attains the 13th year, as the *Garbhadhan* ceremony, immediately leading to consummation, is invariably performed in his part of the country within that period (16 days). Mahamahopadhyaya Dr. Bhagavat Kumar Goswami states that among the lower classes the crime is very much prevalent. He is in favour of a minimum age of Marriage being fixed but thinks conscientious objectors should be excluded. Finally, there is the Bangiya Brahmin Sabha who think that the raising of the age of Consent would seriously affect the religious susceptibilities of the people and cause widespread discontent. The religious sentiment of the people requires the marriage of girls before puberty and consummation on the appearance of first menses. Cohabitation, the Sabha admits, takes place before 13 if the girls attain puberty before that age. Mahamahopadhyaya Sitikanto Bachaspati, Professor of Smriti, Sanskrit College, states that the practice of permitting consummation of marriage after puberty though the girl has not completed 13 years has taken such a deep root in society that even those, who

prefer the more liberal and progressive views, do rarely take any active steps to prevent such consummation even in their own family. All of these witnesses and *Pandits* are of opinion that pre-puberty marriage is enjoined by *Shastras*. Mahamahopadhyaya Pandit Pramothonath Tarkabhusan, Principal, Oriental College, Hindu University, who was examined at Benares, however, clearly states that in the Vedic period marriages were celebrated after puberty but the custom of early marriage came into vogue in India from the time of Alexander the Great. In *Ayurved* there are many injunctions to the effect that the girl should be consummated on completion of the 16th year. He maintains on the authority of *Dharma Shastras*, that according to change of times, social conditions and other causes *Dharma* and *Achar* were changed and if circumstances so demand, they should be changed now. This completes the examination of the statements of all the *Pandits* who have given evidence.

167. There are a few other witnesses who oppose all legislation on grounds other than religious. Mr. Jogendra Chakravarthi, M. L. C., Chairman, Dinajpur Municipality, admits that if puberty is reached before 13 cohabitation is not postponed. He is against an alien Government interfering by legislation in religious and social questions and would leave the question to be solved by social reform. Mr. Charu Chandra Mitra has placed before the Committee several pamphlets on the subject of child-Marriage. The main contention of the witness, both in his pamphlets and in his statement, is that there is not a scrap of evidence to show that the present practice of consummation immediately after puberty injures the health of either the mother or the child. He states that the age of puberty is between 11 and 13 and mostly at 12. The objections raised by this witness have been referred to in Chapter VI.

168. *Medical Evidence*.—Among the very few Allopathic medical men, who have questioned the statement that early consummation and maternity is attended with evil consequences, are a group of doctors of Bengal led by Dr. S. K. Sen Gupta, Professor of Ophthalmology, National Medical College. Dr. J. N. Maitra, M.B., Dr. Ekendra Nath Ghosh, M.D., Professor, Medical College, Dr. Nani-lal Bhan and Dr. J. C. Chatterjee, Teacher of Midwifery, Calcutta Medical School, are the other members of this

group. Their opinion is that a girl is physically fit for sexual intercourse when she has reached puberty and that girls in this country attain puberty generally in their 12th or 13th year. It is further their considered opinion that early maternity is not responsible for high maternal or infantile mortality. They desire to have the same age for intra-marital and extra-marital cases and suggest 14 for the same. It is hardly necessary to point out that one of the largest medical conferences in the east held in Calcutta has repudiated these conclusions.

169. Practically all other witnesses are for an advance by legislation. The statements of a few of them may be examined. Sir P. C. Ray would not reduce the Marriage age to anything below 15 and thinks that the Marriage Law is more desirable. Mr. Mrinal Kanti Bose favours the age of 15 for Marriage legislation and 16 for Consent. Mr. Rebati Mohan Sirkar, M. L. C., feels that legislation is absolutely necessary to secure the object in view and that fixing the age of Marriage is the more effective remedy. He states that cohabitation before and soon after puberty and also before 13 is very common in that part of the country. The witness is a Namasudra and in his community 80 per cent. of the girls marry below 11 or 12. Mr. Mohini Mohan Das, M.L.C., suggests Marriage legislation at 15 or 16 and would have the same age for consummation. Mr. M. C. Ghosh, I.C.S., Judicial Secretary to the Government of Bengal, is of the belief that a great many consummations take place before the age of 13 and that among lower classes pre-puberty consummation is very common. He advocates a Marriage Law fixing the age at 14 and would not desire a higher age of Consent. The Bengal Social Reform League was represented by its president, Acharya Muralidar Bannerjee, formerly Principal, Sanskrit College. The League suggests that the Marriage age should be fixed by law at 16 to make the Law of Consent effective.

170. *Women's Evidence.*—The Ladies that were examined by the Committee all favoured an advance in legislation. The general opinion among them was to have the age of Consent and Marriage at 16. Mrs. Rajkumari Das, M.A., Principal, Bethune College, Lady Pratima Mitra, Miss Jyotir Moyee Ganguli, M.A., Miss Lila Nag, M.A., and Mrs. Latika Bose, B.A. (Oxon) and Sm.

Mohini Devi were all strongly in favour of Marriage law at 16 and preferred 18 as the minimum.

171. The evidence leaves no doubt that the evil of early consummation is very widely prevalent in the Province and among large classes who are following it according to custom and tradition and that the predominance of public opinion, both Hindu and Muslim, is distinctly in favour of an advance by a Law of Marriage and an increase in the age of Consent. It has only to be added that the birth rate in Bengal is the lowest of all Provinces in India being 27·4 per mille, that infantile death rate is 21·4 of the total deaths and that 52·1 per cent. of these infants die within one month of their birth.

172. *Age of Consent Outside Marriage.*—As regards the offences of rape, seduction and abduction, they appear to be sufficiently frequent in this part of the country, in certain communities. It is also found that in the Gowalas, Potters, Barbers, Dhobies, Podus and Shudras, marriages take place at 9 years of age and the female population being less the girls are practically purchased. Consequently there is a large number of widows among them and as there appears to be no custom of re-marriage in some castes, there is much danger of seduction and abduction. Again, it is stated that in Bengal prostitution begins at an early age and that girls of 11, 10 or even 9 are sometimes found to be carrying on this pernicious trade. Witnesses therefore recommend that the extra-marital age may be raised to 18 or even above, excepting a few who think that an age higher than 16 would cause much hardship to the prostitute class.

## BIHAR AND ORISSA.

173. *Conditions in Bihar and Orissa.*—In Bihar and Orissa early Marriage is very common among all classes except the Rajputs, Kayasthas, Karans, Khandaits and the higher classes of Muslims; and its prevalence among Hindus has affected the aboriginal and semi-Hinduized races. The Maithil Brahmins marry their girls generally between 5 and 12 years of age. The Bhumihar and other Brahmins marry their girls between 11 and 13 years of age. The Khattris and Vaishyas generally observe the same practice. The lower classes of Hindus and Muslims marry their girls between 4 and 10 years of age.

174. *The age of Puberty and Consummation of Marriage.*—The age of puberty varies from 12 to 14 years. Some of the witnesses state that among the labouring classes this age is higher and that it varies slightly in different communities. On the whole the ages 12 and 15 may be regarded as the lower and the upper limits. Consummation usually takes place after puberty. The practice of *Gaona* prevails, both among the higher and the lower classes of Hindus, but often the *Gaona* takes place in the first or third or fifth year after marriage without reference to age. Till the *Gaona* ceremony, it is usual for the girl to live with her parents; but cases of consummation before puberty are not uncommon among the Maithil Brahmins and some of the lower classes.

175. The proportion of married persons per mille of each sex under ten years of age is as follows:—

Religion.	Proportion of married per mille aged 0—10.	
	Males.	Females.
Hindu . . . . .	59	100
Muslim . . . . .	34	71
Animist . . . . .	9	13
Christian . . . . .	2	3

176. Infant marriage is most common in the Bhagalpur, Muzaffarpur and Munghyr Districts, less in the Chhota Nagpur plateau, and least in Orissa. The Census of 1921 shows 19 per thousand married girls of all classes under 5 and 154 per thousand married girls between 5—10,

and 465 per thousand married girls between 10 and 15 years of age, inclusive of widows under those ages. The position of the Muslims is in no way better. Among them 17 per thousand girls are found married under 5; 122 per thousand between 5—10; and 469 per thousand between 10 and 15 years of age. The figures include widows under those ages. Among the Bhumihar or Babhan Brahmins 8 per thousand girls get married under 5 and 127 per thousand are in a married state between 5 and 12 years of age. Among the Maithil and other Brahmins, 9 per thousand girls get married under 5 and 155 per thousand are found married between 5 and 12 years of age. Among the Rajputs (Hindu) 12 per thousand girls get married under 5 and 105 per thousand are found married between 5 and 12 years of age. Among the Kayasthas 11 per thousand girls get married under 5 and 56 per thousand are in a married state between 5 and 12 years of age. Among the Chamars, Ahirs, Julahas, Koiris, Kurmis, Musahars, Tantis and Telis, the proportion is immensely higher during those age-periods, and the danger of early consummation and early maternity is therefore much greater.

177. *Evidence.*—The witnesses examined largely support legislation, fixing a minimum age of Marriage and Consent at 14 years; but the ladies examined and some other witnesses go upto 16 years. Some of the orthodox Pandits of Muzaffarpore, however, oppose any legislation regulating Marriage or Consent within the marital relation, and Kumar Ganga Nand Singh thinks that any legislation fixing a higher age than 12 years, is likely to be resented. The Orissa Muslim Association, Cuttack, and Mr. Sachidanand Sinha, Bar-at-Law, oppose Marriage legislation as likely to be unacceptable to the people, but agree to the age of Consent being raised. Mr. Sinha would raise it to 14 years, but the Orissa Muslim Association is ready to go up to 15 years. Syed Muhammad Yunus, however, thinks that the age of 15 years for marriage and consummation is likely to be more acceptable to Muslim opinion.

178. *Deputation from the All-India Women's Educational Reform Conference.*—A deputation of six ladies from the All-India Women's Educational Reform Conference held at Patna waited upon the Committee and pressed for legislation fixing the age of 16 years for marriage and consummation. They thought that the Marriage Law



was absolutely necessary and that too at 16, because once a girl was married, it was difficult to keep her apart from her husband.

179. *Effects of early Consummation.*—It is generally admitted by the witnesses that in all cases, where pre-puberty consummation or consummation soon after puberty takes place, the health of the girl-wife suffers, and the progeny is generally lean, weak, and often shortlived. The Census Report, 1921, states that though the crude birth rate in Bihar and Orissa is high owing to the universality of marriage, the proportion of births to the number of married women at the reproductive ages (15—45) was lower, and the lives that are brought into existence pass out of it more quickly.

180. *Age of Consent Outside Marriage.*—As regards the extra-marital age, some witnesses recommended 16 and others recommended 18 for Consent. The cases of seduction and rape are said to be not very frequent in this Province, but the existing age of extra-marital protection is regarded as insufficient.

## UNITED PROVINCES.

181. *Conditions in the United Provinces—Hindus.*—In the United Provinces, so far as Hindus are concerned, early marriage is generally prevalent among the lower classes, who marry their girls usually between 5 and 12 years of age but ré-marriage of widows is allowed among them. Usually, consummation is allowed after *Gaona*, which, as a rule, takes place after puberty in the first, third, fifth, or seventh year after marriage, whichever may be convenient or agreeable to the parties concerned. Among the higher classes, the marriage of girls generally takes place between the 10th and the 15th year. Early marriage is not very common among the Kanya-Kubja Brahmins, Kshatriyas, and Kayasthas, due largely to the demand of dowries or other economic causes. It is almost non-existent among the Kashmiri Brahmins. It exists largely among the Chowbe Brahmins of Mathura, and the adjoining Districts; and it also prevails among the Gaud and Saryupari Brahmins and among the Khattris, Vaishyas, and Jains. But in none of these communities is consummation allowed until after *Gaona*, which takes place after puberty.

182. *Muslims.*—As regards Muslims, early marriage is not practised among the higher classes. It prevails among the lower classes both in rural areas and towns, but not to the extent to which it prevails among the lower classes of Hindus. Where early marriage takes place among them, it is fostered either by the existence of relationship or some exigency or convenience or the idea of securing some advantage which may be otherwise lost. Where early marriage does take place among the higher classes, it takes place between the ages of 10 and 15 years, and the instances of marriage below 10 years are much fewer. In all these cases, Rukhsati or consummation is generally postponed among all classes, till puberty is attained.

183. Among Hindus, the date or the year of the marriage is very often regulated by astrological considerations, and one of the reasons accelerating a marriage often is that the boy or girl may have no Jupiter in his or her "*lagna*" for a year or two, or that the Venus may have set or other astrological conjunctions, unfavourable to marriage, may arise. These considerations are deep rooted in

the minds of the people, and whenever they arise, the option is invariably exercised in favour of delaying it for that period.

184. *Extent of early marriage.*—The census figures for 1921 show that out of 2,773,311 girls of all classes under 5 years of age in the United Provinces, 18,663 were married and 1,202 were widows. These figures include 2,176 Muslim girls married and 150 Muslim girls widowed under 5 years of age. Similarly out of 3,039,974 girls of all classes between 5 to 10 years of age 306,618 girls were married and 12,223 were widows, these figures including 32,484 Muslim girls married and 1,200 Muslim girls widowed between those ages. Again taking girls between 10 to 15 years of age in the United Provinces numbering altogether 2,196,089, the number of girls married was 1,087,379, and of girls widowed 34,785, out of which 124,782 were Muslim girls married, and 3,163 Muslim girls widowed between those ages.

185. The proportion of Hindu and Muslim boys and girls married per thousand is as follows:—

Age period.	Male.		Females.	
	Hindus.	Muslims.	Hindus.	Muslims.
0-5 . . . . .	5	4	7	6
5-10 . . . . .	58	30	111	75
10-15 . . . . .	236	152	537	489

186. The following table shows the rise in the United Provinces in the age of marriage of girls under 15 years of age per thousand during the last 40 years:—

	Unmarried.		Married.		Widowed.	
	0—10	10—15	0—10	10—15	0—10	10—15
1921 .	943	488	54	496	2	16
1911 .	941	465	55	521	3	14
1901 .	938	448	59	540	2	12
1891 .	945	415	52	574	2	11
1881 .	948	439	51	550	1	11

187. The Census Report for 1921 suggests that this general tendency in the United Provinces, towards the postponement of marriage throughout the population, is due probably to motives of economy. Generally speaking the higher the caste, the later the age of marriage. Mr. Edye thinks that the prevalence of bachelorhood among the higher castes is often due not so much to any shortage of

women as to the interest of school going. The proportion of children, both boys and girls, under 12, who are married, is highest among the Kurmis, Pasis, Kumhars, Ahirs and Chamars, and low for both sexes among the Syeds, Kayasthas, and Sheikhs, and in the case of the girls, the Agarwals and Jats. (Census Report for India, 1921, Vol. I, Part I, page 160.)

188. *Selected castes*.—Taking selected castes, the Brahmins show 12 per thousand married girls below 5 and 115 per thousand married girls between 5 and 12; the Rajputs show 10 per thousand married girls under 5 and 111 per thousand married girls between 5 and 12; the Kayasthas show 10 per thousand girls under 5 and 65 per thousand married girls between 5 and 12; the Saiyads show 10 per thousand married girls under 5 and 56 per thousand married girls between 5 and 12; the Sheikhs show 7 per thousand married girls under 5 and 91 per thousand married girls between 5 and 12; and the Pathans show 27 per thousand married girls under 5 and 103 per thousand married girls between 5 and 12 years of age inclusive of widows. Among the lower castes, both Hindus and Muslims, the percentage of married girls is of course much larger.

189. *Age of puberty*.—The age of puberty in these Provinces ranges from 12 to 15. Hindu girls attain puberty at the age of 13 or 14. Kunbi girls however attain it earlier between 11 and 12. In the tracts near Lucknow the age of puberty for Muslim girls is slightly lower than for Hindu girls. In other parts it is slightly higher for them than for Hindu girls.

190. *Hindu evidence*.—*Medical evidence*.—The witnesses examined largely support an advance in the age of Consent and the fixing of a minimum age for Marriage. Sir Tej Bahadur Sapru recommends 18 for marriage, but in the present state of the country that ideal would perhaps require considerable time before it would be acceptable to the people. Some of the leading men, like the Hon'ble Mr. Narayan Pershad Ashtana, Munshi Ishwar Saran, Dr. Kailash Nath Katju recommend 16 for marriage and consummation. Raja Suraj Baksh Singh, the President of the British Indian Association, is personally prepared to go up to 15, but some of the leading men, like the Hon'ble Raja Sir Rampal

Singh, the Hon'ble Raja Moti Chand, and Nawab Sajjad Ali Khan, recommend legislation fixing 14 as the minimum age for Marriage. The Hon'ble Pandit Gokaran Nath Misra, Mr. V. N. Mehta, I.C.S., and many others take the same view. Dr. Ganganath Jha and some others do not want Marriage Law but would prefer consummation to be deferred to 15 or 16. Some medical men and women, like Major Ranjit Singh, Rai Bahadur Dr. Sarju Kumar Mukerji, Dr. Commissariat, Dr. Rabindra Nath Banerji, Dr. Douglas, Dr. Murphy and Dr. Adderley recommend 16 as the lowest safe age for marriage and consummation.

191. *Women's evidence.*—The lady witnesses speak unequivocally in favour of 16 as the minimum age for Marriage and Consent.

192. *Muslim evidence.*—Khan Bahadur Hafiz Hidayat Hussain recommends 14 for marriage. Mr. Abbasi, the Editor of the "Daily Haqiqat", recommends 15 for marriage and consummation; and Maulvi Inayat Ullah agrees to 14 being fixed for marriage, if the leaders of the community concerned consider that for the advancement of the country and community that measure is necessary. There are certain witnesses on the other hand like the Hon'ble Syed Wazir Hasan, Hakim Ahmed Hussain, Syed Afzal Hussain and others who do not want that an age for marriage should be fixed by legislation, but even among them there are many who recommend legislation fixing an age of 15 for the consummation of marriage.

193. *Evidence regarding evils of early consummation and early maternity.*—Most of these witnesses have referred to instances of injury suffered by young girls or young mothers by reason of early consummation or early maternity. Babu Gouri Shankar Prasad of Benares states that in one instance which happened in the family of one of his relations, a girl 14 years old gave birth to a child and died in the Hospital as a result of labour. Mr. V. N. Mehta mentions that a Julaha girl 11 years old had occasion to go to the house of her husband on the occasion of a festival and was induced by the wife of the elder brother of her husband to go to her husband at night and suffered injuries from cohabitation by her husband, who was 22 years old, and had to go to the Hospital for treatment. Dr. Douglas refers to two cases of injuries, one of a girl of 14 with a badly torn hymen, and another of a girl of 12

with a badly lacerated vagina; and she states that labour was a terrible strain on girl-mothers of 12 to 14, that their progeny was weak, and that the first or second baby often died or did not survive at all. Miss Adderley states that she has had professional experience at Hazaribagh, Cawnpore and Lucknow, and refers to girl-mothers of 13; she says that in one case the baby was premature and in another case the baby was very small and died; that in a case at Cawnpore, the baby was delivered after very great difficulty, because of the girl's immaturity, and that in a case at Hazaribagh, the girl had to undergo a cæsarean operation because she was too small to have a baby born normally. Mr. Abbasi mentions two instances where young girls aged about 12 or 13 years were sent to their husbands and were suffering from hysteria and other diseases and one of them had recently died. He also says that among Muslims of the lower classes, consummations before the age of 13 were common, but among the middle classes, such breaches of the law were rare. Dr. Ernst of Jhansi states that she had seen numerous cases where the health of very young women was ruined through pelvic inflammations, specific and otherwise, and had come across traumatic cases requiring prolonged treatment. Hafiz Hidayet Hussain of Cawnpore refers to one Hindu and two Muslim cases where girls were married at 12 or thereabout, and cohabitation was started between 12 and 13, and when a child was born next year, there was such rapid deterioration that the girls died either immediately or not long after child-birth. Hakim Ahmed Hussain states that about six months ago, a case came to him in which a Muslim girl was married at 12, and there was consummation immediately thereafter, leading to the rupture of the vagina, inflammation of the womb and fever which caused her death. He also refers to two other cases where girls similarly suffered from early consummation resulting in inflammation or displacement of the womb and *osteomalacia*; and in one of those cases he says the girl became a mother at 13 or 14 years of age and had no milk and both the mother and the baby were very weak.

194: These instances can be multiplied from the evidence. Despite such consequences to the mother and her progeny, it is significant that there is still considerable apathy among the people to the voluntary deferment of marriage and consummation till the girl is fully mature

enough to bear the physical strain of early consummation or early maternity. Some of the Kshatriya witnesses examined at Benares candidly stated that they had been trying for reform for the last 30 or 40 years, that the Kshatriya Conference had recommended 14 as the minimum marriageable age for girls, and that the Rajput Sabha had been crying for reform to raise the age of marriage, but it has not succeeded in its attempt. Some of the *Kunbis* who were examined at Benares stated that in their caste, girls were at times sent to their husbands before puberty, that many girls had become very weak and their children were very weak and unfit to do any sort of agricultural work, that they had tried their best that no marriage should take place before 10 years of age for boys and 7 for girls but no body would agree to it, and that without penal legislation fixing a minimum age of marriage no reform would be achieved. These witnesses were not, however, agreed as to what age should be fixed, two of them being in favour of 10 or 11 and three in favour of 13 years. One of them in fact said that he had a daughter who was "now" 5 years old, and that he was unable to get a husband for her, because she was considered by his caste people to be too much grown up.

195. Mr. Mata Pershad, the Secretary of the Koeri Sabha, Benares, suggests legislation fixing a minimum age for Marriage at 14 years and states that his Sabha has been carrying on propaganda work and had fixed 12 as the minimum age for Marriage; but generally girls were still being married between 9 and 12 years of age. At times, though very rarely, consummations were taking place even before puberty, those who married early in villages were weak, and those who married late not so. Mr. Chetram, a member of the Municipal Board, Allahabad, representing the Depressed Classes, is equally frank in acknowledging the evils of early consummation and maternity and supports legislation in favour of a minimum age of Marriage at 14 years.

196. The support of these classes can best be obtained by means of publicity and intensive propaganda through caste Panchayats in urban and rural areas; and the recognition by the men of these classes of the evils of early marriage and early consummation is a hopeful sign that benevolent legislation of the kind suggested would not in these Provinces fall on barren soil.

197. At Benares, several witnesses versed in the ancient shastras and Ayurveda were examined. Some of them state that post-puberty marriages are against the Hindu shastras and they would not recommend the fixation of the minimum age of marriage, in any case beyond 12. But they admit that according to the 'Dharma', a king can legislate in such a matter and fix the minimum age of marriage at 14. According to some, marriages after puberty are permitted by the Vedas and the introduction of early marriage was post-Greek. Even those who think that marriage before puberty was mandatory according to the shastras, say that the marriage age may be fixed by law between 12 and 15, provided marriage before the prescribed age is not invalidated. They agree that the sin attaching to post-puberty marriages can be expiated by the performance of some 'prayaschitta' or other purificatory ceremony. As regards the consummation of marriage, they say that it has been specifically laid down in Ayurveda that marriages should not be consummated below 16 and that the girls ought to observe celibacy till that age. And, since this specific direction has been disregarded by the people to their detriment, it is Dharma that the king should compel them to observe the rule, *i.e.*, by raising the age of Consent to 16. Mahamahopadhyaya Pandit Promoth Nath Tarka Bhusan states that according to the shastras, 'Dharma' and 'Achara' can be changed and have been so changed from time to time. Indeed there are cases, even among the orthodox people, of post-puberty marriages and they are tolerated by the community.

198. The Muslim witnesses examined at Lucknow have admitted that the law fixing the minimum age of Marriage or the raising of the age of Consent within marital relations would not interfere with the Islamic law. They however think that if any age be fixed for marriage, it will be resented by the people who would take it to be an interference with their religion. The Muslims are likely to take the Consent Law in a better spirit than the Marriage Law.

199. *Age of Consent outside marriage.*—It is said that there is a good deal of traffic in girls in some parts of the United Provinces. Girls are abducted, kidnapped and sent to the Punjab where they are sold. Girls are taken from Garhwal too for immoral purposes. The witnesses therefore recommend that the extra-marital age should be raised to 18.



## CENTRAL PROVINCES AND BERAR.

200. The Central Provinces and Berar are inhabited by two distinct classes of people. The population of one part is Hindi speaking and bears affinity more or less to that of the United Provinces; and the population of the other, the southern part, is Marhatti speaking and bears similar affinity to that of the Deccan in the Bombay Presidency.

201. *Conditions in Central Provinces and Berar.*—The practice of early marriage prevails to a very large extent in the Central Provinces and Berar. The total population of the Province is 13,912,760, of whom 11,621,398 are Hindus and 563,574 Muslims. Taking the figures for all religions, we find that 149 girls between the ages of 5 and 10 are married out of every 1,000, and 512 between the ages of 10 and 15. Among the Hindus the proportion is higher, being 173 and 572 respectively, while among the Muslims it is 51 and 304.

202. The Marhatta Brahmans, in general, follow the pre-puberty marriage custom, and marry their daughters at about 11 to 13 years of age. In the more advanced section, however, the marriage age is 14 and above, *i.e.*, after puberty. Among the Kunbis the age varies between 9 and 12. Malis marry at 6 and Telis between 8 and 9. Vaishyas, Kostis, Mahars, Mangs, Dhors and Bhangies have the same custom. The Kayasthas and Prabhus are advanced in this respect and follow the custom of post-puberty marriage. They marry at about 15 and above.

203. It is significant that the high rate of Infant marriages is due to the prevalence of the custom among the lower castes and Depressed Classes. Only 115 of every 1,000 Brahman girls between the ages of 5 and 12 are in a married state. The Malis, on the other hand, have 518 married girls out of every 1,000 girls of this age. The Kunbis come next with 505 married girls. The Chamars have 414 girls married; the Mehras 399; the Telis 329; the Baniyas 259; the Rajputs 258 and the Kurmis 251. These figures again illustrate the fact that custom and family tradition are the most powerful factors responsible for early marriage, and that religion or religious texts are a guide in this respect to comparatively few people or castes.

204. *Age of puberty and consummation of marriage.*

The average age of puberty is 12 or 13; and the practice that marriages are consummated soon after puberty, irrespective of age. Pre-puberty connections and consummations before the age of 13 are very common among the Gonds, Mahars, and the Depressed Classes in general.

205. *Hindu evidence.*—The orthodox classes largely oppose any legislation for raising the age of Consent or fixing a minimum age for Marriage. F. Bahadur Ganeshdas Kundanmal of Amraoti does not want any law at all in these matters, and goes so far as to say that the present law should be repealed as no evil consequences followed from early consummation and that the law would be troublesome to the people and endanger morality. Mr. B. G. Khaparde, M.L.A. objects to fixing a minimum age of Marriage by law because it is a matter pertaining to social reform and must be left to the good sense of the society. Likewise, he is against an increase in the age of Consent because the higher the age, the greater would be the chances of offence being committed and therefore greater the chance of intervention by the law. Raja Kuwar Laxman Bhonsle, Nagpur, holds that the Legislative Assembly is not competent to deal with such religious matters. S. Mathuradas Mohota, M.L.C., of Hinganghat thinks that the socio-religious conditions do not justify an advance in the present law of Consent and that any question of a social or religious nature should not be touched by legislation but should be left to be dealt with by social propaganda. F. Bahadur Sadashiva Jairam, M.A., Mahamahopadhyaya, Nagpur, says that so far as consummation of marriage is concerned there is an imperative religious injunction to perform it within the first 16 days of puberty and that the appearance of puberty, is according to the Shastras a condition for cohabitation. As regards marriage he is of opinion that post-puberty marriages were not condemned by the Shastras, but were considered as second best or inferior. Though he is against legislation on religious grounds, his personal view is that 14 should be fixed both for the age of Consent within the marital relation and as the minimum age for Marriage. There are a few other witnesses who do not want legislation because the public opinion is not said to be ripe for it.

206. The number of those who want an advance in age by legislation is, however, very large. Mr. R. M. Deshmukh, M.L.C., *Ex-Minister*, C. P. and Berar, who represents the Maratha community, thinks that the people follow early marriage as a result of the custom in existence and not as an injunction from any law-giver, and he recommends a cautious advance in the age of Consent within the marital relation. He is, however, of opinion that no better protection will be afforded to girls by merely raising the age of Consent. Fixing a minimum age of Marriage appears to him to be a more effective remedy and he recommends 14 for the purpose. In the opinion of Rao Bahadur K.S. Naidu, Public Prosecutor, Wardha, a Marriage Law will be a more effective remedy: Mr. Laxmi Narayan, B.A., B.L., retired District and Sessions Judge, Raipur, considers that penal legislation, fixing a higher age of Consent for marital cases, is not likely to be at all effective, that fixing a minimum age of Marriage would be more effective, and that if such legislation is passed, the inevitable result in course of time would be to raise the age of Consent within and outside the marital relation. Though personally he would like that the minimum age of Marriage should be fixed at 14 or 15, looking to the different views of different classes and also to the present conditions, he recommends 12 for Marriage Law and 16 for Consent. If the Marriage age be fixed at 14, he would like to have exemptions for hard cases. In the opinion of Mr. G. P. Jayaswal, B.Sc., LL.B., M.L.C., Sohagpur, an advance on the existing law would not be undesirable, as it would in the long run produce a beneficial effect on the health of the nation. He prefers a law fixing a minimum age for Marriage. Mr. M. P. Kolhe, M.L.C., Yeotmal, thinks that legislation fixing a minimum age of Marriage would be in consonance with public opinion. Mr. N. S. Patil, M.L.C., of Akola also favours an advance in the age of Consent and thinks that an increase in the marriageable age is more advisable than increase in the age of Consent. Mr. K. B. L. Seth, M.A., LL.B., I.C.S., District and Sessions Judge, Wardha, considers that the desired result would not be achieved without legislation, fixing both a higher age of Consent for intra-marital cases and a minimum age for Marriage. Mr. R. N. Banerjee, I.C.S., Deputy Commissioner, Akola, Mr. G. V. Deshmukh, Bar.-at-Law, Nagpur and Rai Bahadur P.

C. Bose, President, Municipal Committee, Jubbulpore suggest 16 as the minimum age of Marriage.

207. *View of the Depressed Classes.*—Mr. G. T. Mesram, Vice-President, Civil Station sub-committee, Nagpur and Mr. L. K. Ogle, M.L.C., of Amraoti representing the Depressed Classes were also examined. They testify to the evil effects of early marriage and consummation, favour an advance by legislation and prefer a Marriage Law to the Age of Consent Law. They recommend 14 as the proper age for both these purposes.

208. *Muslim evidence.*—As regards Muslim evidence is generally favourable to an advance in the age of intra-marital Consent, but not to a Marriage Law to the same extent. Mr. Abdul Kadir, pleader, Amraoti, and Mr. Faizul Hasan, B.A., LL.B., Honorary Secretary, District Council, Balaghat, recommend 14 for Consent within the marital relation. The former is not much in favour of Marriage Law as the people would not like it, but thinks that a Marriage Law with the age of 14 would work better, if exemptions are given. Mr. Ishtiaq Ali, E.A.C., Seoni, wants the age of Consent at 14 as at that age the girl will be in a better position to give consent to cohabitation and he thinks that it would be more effective than a Marriage Law. Khan Bahadur M. E. F. Malak of Nagpur says that there is nothing in Muslim religion which enjoins early consummation and personally thinks that the age of intra-marital Consent should be raised, but advises that the measure may wait till public opinion is ripe for it. Mr. Karamalli, President, Municipal Committee, Chanda, though preferring to rely on social reform considers that in the interest of all it would be better if a higher age of Consent is fixed for marital cases.

209. *Women's evidence.*—The ladies examined generally support an advance by legislation, and recommend 16 as a suitable minimum age for Marriage. Mrs. Mukandam, the lady Superintendent in charge of the Dufferin Hospital, recommends the age of 16 to 18 for the age of Consent. Mrs. Anasuyabai Kale considers the Age of Consent Law by itself to be of no use and prefers a Marriage Law, fixing 16 as a minimum age for Marriage. The same age is recommended by Mrs. E. G. Dick, Vice-President of the Ladies Club, Nagpur. Lady Yashodabai Joshi, An

raoti, thinks that marriages of girls below 18 should be penalised.

210. *Awakening among the people.*—It is worth while to note here that the Mahars have passed a resolution condemning early marriage, while a conference of Maheshwari Marwaries has passed a resolution fixing the age of 13 for the marriage of girls. The Legislative Council of this Province has also passed a resolution on the 25th January 1929, giving support to the Sarda Bill. It is obvious from this and the evidence that the public feeling is growing against the practice of early marriage and early consummation.

*Age of Consent outside marriage.*—As regards the offence of rape, and the allied offences of kidnapping and abduction, it appears that in the Chattisgarh Division, girls of the working and rural classes, between the ages of 15 and 20, are often seduced and abducted. The witnesses examined advise that the age of Consent in extra-marital cases should be raised to 18 to protect girls from improper seduction.

## CHAPTER V.

## THE PRACTICE OF EARLY MARRIAGE AND CONSUMMATION.

212. We may now examine the origin of the system of early marriage and consummation, the extent to which the system prevails in the country, and the reasons for such prevalence. By the term 'early marriage' here may be understood, marriage where the bride is below the age of 15.

213. *Nature of a Hindu Marriage.*—There should be, by now, no misconception about the real significance of the ceremony of marriage among Hindus. Marriage is not a contract but a religious sacrament and one of the Samskaras (rites) which is prescribed to every Hindu. It is not a mere betrothal or engagement, from which the parties can break off, but an irrevocable tie which makes the couple husband and wife in the eye of the law and of the public, and after which, the death of the boy leaves the girl a widow. In several castes, marriage is performed at any age before the girl attains puberty but it is not necessarily, nor even usually, followed by consummation. At the same time, in some parts, cohabitation often takes place before the child-wife has reached the age of puberty, and almost always very soon after. In many other castes, post-puberty marriages are common.

214. *Origin of the custom of early marriage.*—It is difficult to determine how the custom of early marriage originated. Various theories have been advanced by students of history but no definite conclusions can be arrived at from them. It is contended that when the Aryans first came to India they were strangers to infant marriage. "In the society depicted in the Rig and Atharva Vedas, courtship of a modern type was fully recognised; and the consent of the girl's father or brother was sought only when the young people had themselves come to an understanding. Neither in the dramatic, nor in the epic literature, does child marriage play any noteworthy part, nor is it known in the legendary literature of the Buddhists".\* It is argued therefore that the custom was the result of the adoption of the practices of the people whom the Aryans conquered or of the impact between the two civilizations.

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\* Census Report. India, 1911, Volume I, page 270.

215. *Vedic period*.—There is evidence to show that marriages in the Vedic period were effected when the couple had reached a mature age and were capable of understanding the nature and significance of the marriage ceremony. The Mantras that are uttered at the marriage and the expressions that are exchanged between the husband and wife during the ceremony, particularly in the Saptapadi (going seven times round the sacred fire), which make the marriage tie irrevocable, furnish strong evidence negating the possibility of mere children being married. The function, known as the “Chaturthi Karma” on the 4th day of the marriage ceremony, appears to have been intended for an actual consummation of marriage, presumably of adults, and a semblance of it survives to-day in some places, where the child-wife and the boy-husband are brought together in a room.

216. *Smriti period and later*.—The time when the custom of early marriage originated is also difficult of determination. The Smritis advocate the marriage of girls of 8 and 10 years of age but it is not possible to state whether they record an existing practice or put forward an ideal. Some witnesses have alleged that the custom began after the Muslim invasion and was due to the fact that married girls were immune from capture by the invaders. Some witnesses have even traced it back to the Scythian or Greek invasion. We have not however been furnished with any historic basis for any of these allegations and the origin of the custom must continue to remain obscure.

217. It may be that economic causes contributed to establish or perpetuate the custom. In some cases the marriage of a girl shifts the burden of her maintenance from her parents to her husband or his parents. Among the working classes, however, the girl is an earning member of the family and may not be a burden to her father. Many of the lower castes appear to regard the custom as a badge of respectability and encourage it on that account. To a certain extent, the prevalence of the custom may be accounted for by the high value which is set on chastity among women, by the Hindus and Muslims, and the desire not to run any risk by late marriage and late consummation. The precocity of town-bred girls and the out-door life of their rural sisters may, it is said, expose them to dangers and the consequent desire to safeguard the morality of the girl may result in securing for her a husband at

the earliest possible moment. That the risk is very slight or that apprehensions on this score are groundless, is proved, not merely by the fact that the standard of female chastity is just as high among the communities which practise late marriage, but also by the fact that a large majority of Hindu girl widows lead a virtuous life. All the same, girls who have attained puberty are objects of anxiety and care to mothers in Hindu and Muslim homes, just as they probably are in well-conducted homes elsewhere.

218. Whatever may be the origin of the system of early marriage and whether Smriti texts adumbrated the custom or merely recorded it, its binding force and wide prevalence to-day are undoubtedly due very largely to custom, so compelling, that a departure from it involves social obloquy and perhaps fear of social degradation or even ostracism in a few cases.

219. *Extent of prevalence of the custom.*—The Census reports give the number of girls in a married state at various age periods. Taking the All-India figures of the 1921 census, the following table gives the number of girls married, unmarried and widowed at the three age-periods of 0-5, 5-10, and 10-15.

	Under the age 5.	Between the ages 5 and 10.	Between the ages 10 and 15.	Total.
Married	218,463	2,016,687	6,330,207	8,565,357
Unmarried	19,938,007	20,782,275	9,961,195	50,681,477
Widowed	15,139	102,293	279,124	396,556
<b>TOTAL</b>	<b>20,171,609</b>	<b>22,901,255</b>	<b>16,570,526</b>	<b>59,643,390</b>

220. It is noticeable that the number of married girls shows a very large increase in the age period 10-15. The census returns do not show what percentage of girls get married before they complete the 15th year. But a rough estimate can be arrived at by calculating how many of the unmarried girls below the age of 10 are likely to get married before they reach the 16th year. The proportion of girls found married or widowed between 10 and 15 (6,609,331) to the total number of girls of that age period (16,570,526) is 39·8 per cent. It would, therefore, be safe to assume that the girls who are unmarried below the age of 10 would be found in the married state to the same extent, *i.e.*, that 39·8 per cent. of these girls would be married, before they reach the age of 16.

221. *Females affected or likely to be affected by early marriage.*—In order, therefore, to find out the total num-



ber of girls who will be married before they complete their 15th year, we have to add together the number of—

(a) All married girls under 5, <i>i.e.</i> . . . . .	218,483
(b) All married girls between 5 and 10, <i>i.e.</i> . . . . .	2,016,687
(c) All married girls between 10 and 15, <i>i.e.</i> . . . . .	6,330,207
(d) Widows between 0-15, <i>i.e.</i> . . . . .	396,556
(e) 39·8 per cent. of girls unmarried below ten, <i>i.e.</i> . . . . .	16,206,672
<b>TOTAL</b> . . . . .	<b>25,168,585</b>

The total number of girls likely to be married before the completion of the 15th year is thus 25,168,585. The total number of girls below 15 is 59,643,390 and the proportion of girls likely to be married below that age is therefore 42·2 per cent. It is to be noted that among girls who are unmarried between the ages of 10 to 15, a large number will get married before they complete the 15th year. This number is, however, so indefinite that it has not been taken note of in the above calculation. For the same reason, there must be a similar increase in the percentage of girls who are now below 10 and who will get married before they complete the 15th year. It is therefore clear that if these factors are also taken into consideration, the percentage of girls who are married before the completion of the 15th year will probably be nearer 50 per cent. than otherwise.

222. If we adopt a calculation similar to what has been suggested above, for the different Provinces and for the two principal communities therein, we shall obtain a rough estimate of the extent to which the system of early marriage is prevalent. The subjoined table gives the proportions for each Province and for Hindus and Muslims in each Province.

Province.	Percentage of girls under 15 affected or likely to be affected by early marriage.	Percentage of Hindus.	Percentage of Musalmans.
All India . . . . .	42·2	48·4	37·01
Assam . . . . .	26·3	27·6	34·1
B. & O. . . . .	52·4	62·4	49·9
Burma . . . . .	0·4	0·25	3·8
Bengal . . . . .	55·5	63·8	51·7
C. P. & Berar . . . . .	56·9	62·8	31·8
Bombay . . . . .	54·4	61·3	26·6
N.-W. F. P. . . . .	12·6	19·2	12·01
Madras . . . . .	24·3	26·07	12·6
Punjab . . . . .	24·7	37·1	18·8
U. P. . . . .	53·1	55·5	40·7

223. *Early marriage only gradually abandoned.*—There is no doubt that the practice of early marriage is being gradually abandoned by several castes and communities. But the pace of improvement is exceedingly slow. Moreover, progress in one community is counterbalanced by regression elsewhere, and while castes and classes which are considered advanced may be getting over the practice, others are adopting the older customs to an increasing extent, with a view, possibly, to ascend in the scale of the caste hierarchy.

224. *Pace of progress slow.*—Taking the age period 13-15 where the density of marriages is the greatest and comparing the figures of 1921 with those of 1891 for persons of all religions, we find that there were 601 unmarried girls out of every thousand in that year, as compared with 491 girls in the latter year. The increase in the number of unmarried girls of 110 shows a rise in the percentage of unmarried girls of 11 per cent. for 30 years. When it is further seen that this percentage does not represent the actual increase of girls who pass the 15th year unmarried, it will be realised that there is no reason to feel satisfied with the pace of progress. Nor has the progress been so steady and continuous as to engender the hope that a time will come when, by voluntary effort, early marriages will be a thing of the past. Taking the years 1901 and 1911 into consideration, it is found that there were 559 and 555 unmarried girls respectively per thousand, showing a rise of 4 per cent. for the decade. When the statistics of Hindus and Muslims are separately considered for the same period, an even more surprising state of affairs is revealed. In 1901 there were 511 unmarried girls among the Hindus while in 1911 there were only 495 per thousand, which shows that there was a set back during the decade of 1·6 per cent. Among the Muslims there were 597 unmarried girls in 1901 and 596 in 1911 showing the negligible improvement of 0·1 per cent. (*Vide* Appendix V-F). On the other hand, the fall in the number of married boys between the ages of 10 and 15 is steady and all the three decades show an improvement in this respect, the decrease being from 164 in 1891 to 16 in 1921. (*Vide* Appendix V-G).

225. *Age of consummation.*—*Pre-puberty consummation.*—The age of consummation varies in different communities but is to a large extent dependent on the age of marriage. Where early marriage prevails, there are in-

stances of pre-puberty consummation. From the evidence before us, we are led to the conclusion that this practice, though neither general nor characteristic of any class or community, exists to a far greater extent than may be ordinarily supposed and requires a drastic remedy. Even among Muslims, although marriages are considered as contracts and are generally entered into at or after puberty, such pre-puberty consummations are not infrequent, notably in Bengal and Malabar. The evil thus exists both among Hindus and Muslims, though to a lesser degree among the latter.

226. *Consummation soon after puberty.*—Consummation soon after puberty is almost universal among classes which practise early marriage. The maximum period that elapses after puberty rarely exceeds one year. There is a considerable number of cases, however, where it occurs within a much shorter period and some, where it follows within a few days of puberty. The fitness of a girl for consummation and possible motherhood from the physiological point of view is hardly taken into consideration. That puberty is a sufficient indication to justify consummation, appears to be so self-evident a doctrine that some witnesses are prepared to disregard and brush aside all medical evidence to the contrary effect. This is specially true of witnesses of conservative views, some of whom have suggested that puberty should be fixed as the test instead of any age of Consent.

227. *Customs-deferring consummation.*—In different Provinces, there is a practice under which the girl's residence with her parents or original guardians, till she is considered fit to go to the husband's house, is permissible; after that period, however, a time arrives when a ceremony variously called 'Muklawa', 'Gaona', 'Bolwan', 'Dwiragaman', 'Anu', 'Doli' or 'Rukhsati' takes place. The first five may or may not be proximate to actual consummation. There is a growing tendency everywhere to drop this practice, more so in cases where the girl is married at a late age. At the time of the 'Doli' or 'Rukhsati' ceremony, the girl generally goes for consummation. The 'Garbhadhan' ceremony is a Samskara precedent to actual consummation. It is a rite that is performed amongst the Brahmins generally and amongst some other castes, but is falling into disuse more and more. Even in post-puberty marriages, the girl's age is, more often than not, below 16

and as the age of puberty differs in girls, it is almost a certainty that consummation takes place in many cases at any time between 13 to 15 and none of the ceremonies are any protection to unions before 16.

228. *Reasons for early consummation.*—Amongst Brahmins and some other classes, Smriti texts are invoked to prove the need of consummation soon after puberty—preferably within 16 days of the first menses. Apart from differences between Pandits as to the texts quoted being recommendatory or mandatory, the time of actual performance of Garbhadhan or consummation ceremony varies in different places. Amongst certain classes, and in Provinces where there is pre-puberty marriage, early union takes place, owing to gross ignorance of the physiological aspect of sex relations or a desire to imitate the higher classes. In the case of elderly widowers, the practice of cohabitation soon after marriage prevails; this is largely due to the impatience on their part. The disparity in the age of the husband and wife in such cases is due to the custom which precludes the possibility of girls beyond a certain age being available for marriage in certain castes. In some cases, where a young husband is going wrong, the girl is sent to the husband, though she had not attained puberty, as a steadying influence on the young man. There are cases where the parents of the girl are too poor or are unable to look after the girl and would like to see the responsibility of the girl's maintenance and good conduct shifted to the husband's side. Sometimes a demand for money from the husband's side, not readily assented to by the girl's side, prolongs the interval between puberty and consummation. But there is no conscious realisation of the fact that full physiological development of the girl is necessary or desirable for ensuring a healthy mother and a healthy child. The restraints, that once operated on a member of a Joint Family regarding pre-puberty or early consummation, are disappearing with the gradual disintegration of Joint Families and thus a check which was formerly operative has disappeared. It will be thus apparent that the present practice of early consummation is more a matter of custom than religion, the transgression whereof involves no serious penalty.

## CHAPTER VI.

## OBJECTIONS TO THE LAW OF CONSENT AND TO A LAW OF MARRIAGE.

229. *Grounds of objections.*—The opposition to any Law of Consent or an increase in the age of Consent and to a Law of Marriage has proceeded mainly on the following grounds :—

- (1) That no law should encroach upon matters of domestic and social nature and that the proposed reform should be left to the community concerned, to be dealt with by means of social propaganda or otherwise. Resort to legislation would only be justifiable on a demand by the community affected.
- (2) That the Government, being foreign, is neither competent nor entitled to force such a law on persons of a different race and religion, and that such an interference would mean a violation of the pledge about neutrality in matters of religion referred to in the Queen's Proclamation.
- (3) That the existing Legislature is not representative of the people of India.
- (4) That the Legislature being composed of different communities, no legislation affecting the social rights or religious customs of any particular community ought to be undertaken by a body of that description.
- (5) That the proposed increase in the age of Consent within marital relations, as also a law fixing a minimum age of Marriage, would interfere with the religious laws, rights and customs both of Hindus and Muslims; that among Brahmins and some other castes, post-puberty marriage is a sin and that the non-consummation of marriage within 16 days of the wife's first menses is also a sin; that Government would not be justified in putting people of these castes in a position where they may have to transgress either the religious custom or the Laws of Consent and Marriage.

- (6) That puberty is a natural indication of a girl's fitness for cohabitation and maternity; that maternity soon after puberty has so far not been productive of any evil to mothers or their progeny and that maternal and infantile mortality is due to economic and other causes.
- (7) That consummation soon after puberty is necessary to satisfy the sexual craving in girls; if the same is not satisfied, girls may be led to abnormal methods of satisfaction. The morality of boys and girls may thus suffer, as is shown by examples from foreign countries described by Judge Lindsay of Denver and others.
- (8) That interference by Government with religious customs would create dissatisfaction amongst the people.
- (9) That early marriage secures the girl's unadulterated love towards the husband and the other members of his family and preserves the Joint Family.
- (10) That legislation fixing the age of Consent derogates from the rights conferred upon the husband by marriage.
- (11) That no law is necessary, as the age of marriage and consummation is gradually rising as a result of conscious effort or by force of economic circumstances.
- (12) The law has been amended in 1925 and no circumstances exist to justify an advance so soon thereafter.
- (13) That the law is liable to be abused.
- (14) That the Law of Consent has so far been a dead letter in marital cases and would continue to be so, even if the age be raised, and that such a futile law should not encumber the statute book.

230. *Is legislation the proper remedy?*—Ordinarily, it may be correct to say that in evils of domestic and social concern, especially those involving socio-religious customs of large communities, the remedy for the evils should be

left to propaganda, appealing to the good sense of the communities concerned. It is impossible however to lay down that legislation in such matters may never be resorted to for eradicating such evils. The laws of Sati, and widow remarriage, the removal of the ban on inheritance by converts and the law of civil marriage, are some of the instances in which there has been legislation and in all these cases the new legislation has trenched on custom, and religious injunctions. The first was undertaken on grounds of humanity and others in furtherance of social justice. It is true that some of these laws were only permissive; it must be recognized, however, that there are many others which positively override provisions sanctioned by the Hindu or Muslim law. The Committee accept the argument that the fact of the law having trenched on such practices on so many other occasions is, by itself, no justification for further inroads on Law and Custom; but we note the fact that the Legislature has, in fact, in cases considered suitable, interfered by legislation and that several changes have been made in the personal law of the Hindus and Muslims by the Legislature from time to time—the last of these being the Hindu Inheritance Amendment Act of 1929. Although it is true that the proposed legislation touches a very delicate chord regarding the most personal and intimate relations between human beings, that fact does not exempt it from interference by the Legislature on a proper case being made out, either to prevent a shocking evil or to further social justice. It may be remarked that in every civilised country, legislation has been used as a remedy to remove social injustice and other evils of that character. In matters affecting Marriage and Consent in particular, legislation has been resorted to in several countries, notably in Egypt and Turkey (*vide* Appendix X-B). In several Indian States also, such as Baroda and Indore, such laws have been enacted and have already been in force for some years (*vide* Appendix XI.)

231. *Legislation justified only for proved evils.*—It may further be conceded that the evil of early marriage resulting in early maternity must be shown to be an evil of such magnitude as to justify interference by legislation. In all cases of legislative interference, there must be circumstances to justify a change and this is specially so, when

the change affects a class of orthodox people and the delicate relations between husband and wife.

232. It has been shown in paragraphs 358 to 368 of our Report that early maternity is an evil and an evil of great magnitude. It contributes very largely to maternal and infantile mortality, in many cases wrecks the physical system of the girl and generally leads to degeneracy in the physique of the race. Let us compare the case of Sati which was prevented by legislation with the case of early maternity. Satis were few and far between. They compelled attention by the enormity of the evil in individual cases, by the intense agony of the burning widow and the terrible shock they gave to humane feelings. But after all, they were cases only of individual suffering; the agony ended with the martyr and the incident had some compensation in the martyr being almost deified as an ideal Hindu "Pativrata", a devoted wife, the subject of adoration after death. In the case of early maternity, however, the evil is wide-spread and affects such a large number of women, both amongst Hindus and Muslims, as to necessitate redress. It is so extensive as to affect the whole framework of society. After going through the ordeal, if a woman survives to the age of 30, she is in many cases an old woman, almost a shadow of her former self. Her life is a long lingering misery and she is a sacrifice at the altar of custom. The evil is so insidious in all the manifold aspects of social life that people have ceased to think of its shocking effects on the entire social fabric. In the case of Sati, the utter hideousness of the incident shocked the conscience; in this case the familiarity of the evil blinds us to its ghastly results. If legislation was justified for preventing Sati, there is ample justification for legislation to prevent early maternity, both on the grounds of humanity and in furtherance of social justice.

233. *Is Government forcing legislation?*—Admitting that the Government is a foreign Government, the Central Legislature, and not the Government, will be responsible for the new enactment. Government has always been hesitant and cautious and has acted more as a brake than as a power for advance in this matter. Both the bills are brought, not by the Government, but by elected members. Orthodoxy has its advocates not only outside but inside the Legislative Assembly and they have been amply heard: and



a large interval of time has been allowed for deliberation and expression of opinion by the general public. There is thus no warrant for the charge that the Government is forcing the new legislation down the throats of unwilling Indians.

234. *Is contemplated legislation against Queen's Proclamation and religious usage?*—The question of the violation of the Queen's pledge and of the policy of the Government of non-interference in religious matters was discussed in 1891. At that time it was clearly pointed out that the Age of Consent legislation did not involve a violation of the Queen's pledge. The proclamation says "In framing and administering laws, due regard be paid to ancient rites, usages and customs of India". It does not undertake absolute non-interference. Lord Lansdowne, the then Viceroy, said—

"I will venture to say that, in the eyes of every reasonable man or woman, the pledges contained in the Queen's Proclamation must be read with a twofold reservation, upon which the Government has always acted, and which was not specified in the letter of the contract simply because it has always been acted upon and was perfectly obvious and well understood. The first of these reservations is this, that in all cases where demands preferred in the name of religion would lead to practices inconsistent with individual safety and the public peace, and condemned by every system of law and morality in the world, it is religion, and not morality, which must give way."

"Now the Act, far from absolutely precluding the Government of India from dealing with matters affecting religion, expressly contemplates the possibility of such legislation becoming necessary, although it safeguards it from irresponsible initiation. The words of the 19th section show as clearly as possible that, subject to proper precautions, legislation such as that which is now taking place was contemplated by Her Majesty's advisers, who were responsible both for the Proclamation and for the Act from which I have just quoted."

"What I have said seems to lead inevitably to the second of the two reservations of which I spoke a moment ago. It is this, that in all cases where there is a conflict between the interests of morality and those of religion,

the Legislature is bound to distinguish, if it can, between essentials and non-essentials, between the great fundamental principles of the religion concerned and the subsidiary beliefs and accretionary dogmas which have accidentally grown up around them. In the case of the Hindu religion, such a discrimination is especially needful, and one of the first questions which we have to ask ourselves is, assuming that the practice with which our proposed legislation will interfere is a practice supported by religious sanctions, whether those sanctions are of first-rate importance and absolutely obligatory, or whether they are of minor importance and binding only in a slight degree." That argument is equally applicable to-day. Section 19 of the Indian Councils Act 1861 laid down that with the previous sanction of the Governor-General, measures affecting religion or religious rites and usages of any class of Her Majesty's subjects in India may be introduced, not only in the Imperial Council but in the Provincial Councils also. The same provision has been repeated in the enactment now in force, *viz.*, Government of India Act of 1919, Section 67, Clause 2.

235. In exercising this power, the Government has to pay attention to the religious opinions and customs of the people. A discriminating regard for those opinions, however, is not and should not be incompatible with the suppression of practices detrimental to national interests. The practice of pre-puberty marriage and consummation soon after puberty, so far as it is sought to be justified on religious grounds, varies with different texts or with different interpretations of the same texts. In view of these facts, it cannot reasonably be argued that there is a violation of the pledge given in the Queen's Proclamation.

236. *Is the Legislative Assembly representative of the people and can a mixed Legislative Assembly deal with social customs of particular communities?*—Admitting that the franchise on which representatives are sent to the Legislative Assembly is not wide enough to make them representative of the entire population, they are still sufficiently representative to be trusted to know the best interests of their countrymen. If they are representative enough to demand self-Government for India, a fact which is not contested, they are representative enough to introduce social legislation also.

237. It has been strenuously contended by some witnesses that the Legislature, being composed of members of various communities, is incompetent to enact measures concerning social rights or religious customs, which, though applicable to all, would affect some more than others, and that the particular community concerned is the only body fit to judge if any changes are required. In particular, it is advanced that if Brahmins are affected by such a measure, only the members of that community ought to have option to change existing practices and that similarly if Hindus or Muslims are affected, each of these communities separately should have the right to decide on the need for the change.

238. It has been the practice of the Indian Legislature to confine its attention to secular matters and not to concern itself with religious affairs. Even where a custom is stated to be based on religion, the Legislature deals with it, not with a view to change a religious practice but merely because civil rights are involved in such practices and the competence of the Legislature to deal with such matters cannot be questioned on the ground of its heterogenous character. There is only one agency at present to enact laws and that is the Legislature established by the Government of India Act. If there were alternative bodies for the purpose, the argument as to which is the preferential forum may have some weight. As it is, this line of reasoning is only destructive, and is advanced to prevent all legislation on the subject and not to secure such legislation through a more desirable agency. It may also be pointed out that the extreme position taken up in the objection has not been supported by any section of politicians in the country and that none of the draft constitutions relating to the future Government of the country provide for such caste or communal legislative bodies. The proposition therefore is one that cannot be supported by precedent and is impossible to sustain.

239. *Texts on Hindu and Muslim Laws and interference with religious usage—Hindu Law Texts.*—The authorities for pre-puberty or post-puberty marriages and for consummation soon after puberty may be classified as follows:—

1. Vedic incidents known as Vaidic Lingas from which inferences can be drawn regarding late or early marriages.

2. Ritual at marriage and the recitation of Mantras from which inferences can be drawn and

3. Smriti texts.

It may be stated at the outset that texts are cited only to uphold present customs. Whatever may have been the origin of the practice of early marriage, it is certain that what counts most with orthodox Hindu society at present is the existence of certain customs. It is an accepted maxim in Hindu Law that in a conflict between custom and a Smriti text, custom will prevail. Accordingly, although some Brahmins, like Nambudris in Malabar and Kulin Brahmins in Bengal, observe post-puberty marriages and many other classes of Brahmins practice pre-puberty marriages, both accept the authority of the Smriti texts. The Nambudris rely on the special text of Shankar Smriti for post-puberty marriages; but this is not accepted elsewhere in India and its authenticity has been questioned. The Kulins rely on the same Smriti texts as others but do not look upon post-puberty marriages as sinful. The Kshatriyas and Vaishyas on whom also the texts are binding have varying customs, as varying as amongst the Brahmins. The texts are held to be mandatory or permissive to suit existing practices. The attempt amongst the Hindu theologians has always been not to recognise contradictions or variations in Smriti texts, but to try to reconcile them on the assumption that they are of equal authority. There is such diversity of opinion amongst theologians themselves as regards the texts that no interpretation can be said to be decisive. Parashara Smriti is said to be binding in Kaliyuga; its authority is paramount; but even on this point theologians differ. Conferences of Pandits were held at Conjeevaram between the 5th and 10th April 1912 and at Tiruwadi between 21st and 31st December 1912, where these texts were discussed and the results are briefly quoted here to show the diversity of opinion.

240. *Conjeevaram Parishad, April 1912.*—“ III. *Third question.*—Do any of the Shastras prescribe post-puberty marriage for Brahmin girls or at least permit such marriages as an inferior alternative?

Answers.

(a) The Shastras prescribe post-puberty marriage for Brahmin girls. (Eight Pandits.)

(b) Some Shastras prescribe post-puberty marriage, others merely permit such marriage. (Two Pandits.)

(c) The Shastras permit post-puberty marriage under certain circumstances for a period of three or four years after puberty. (Twenty-one Pandits.)

(d) The Shastras permit such marriage only under unavoidable circumstances (Apad). (Nine Pandits.)

(e) Though permitted by the Shastras under certain circumstances, such marriages would be against the practice of the pious and the learned, and should not be adopted. (Three Pandits.)

(f) The Shastras prohibit post-puberty marriage. (Seven Pandits.) ”

241. *Tiruvadi Parishad, December 1912.*—“ III (a) *Third question.*—In this Kaliyuga is Parasara Smriti to be regarded, in all respects and under all circumstances, as of superior authority to all other Smritis?

(b) Is the postponement of the marriage of Brahmin girls in Kaliyuga till after puberty, owing to the difficulty of securing suitable bridegrooms, opposed to the teaching of Parasara Smriti?

### Answers.

(a) (1) Paraśara Smriti must be regarded as of superior authority in all respects and under all circumstances. (Forty-five Pandits.)

(2) Not always of superior authority. (Eighteen Pandits.)

(3) Parasara Smriti is of superior authority only on certain points. (Twenty-six Pandits.)

(b) (1) The marriage of Brahmin girls after puberty in the circumstances indicated<sup>1</sup> is not opposed to Parasara Smriti. (Thirty-seven Pandits.)

(2) Such marriages are opposed to the teachings of Parasara Smriti. (Fifty-one Pandits.)

IV. *Fourth Question.*—Do any of the Shastras ordain that Brahmin girls should be married only after puberty, or allow such post-puberty marriages as an inferior alternative, *i.e.*, as a Gaunakalpa or as an Apatkalpa? If the last, what kinds of ‘Apad’ (difficulties) justify the postponement of marriage till after puberty?

## Answers.

(1) The post-puberty marriage of Brahmin girls is recognised by the Shastras. (One Pandit.)

(2) According to the Shastras, Brahmin girls should be married only after puberty, *i.e.*, post-puberty marriages are prescribed as a Mukhyakalpa. (Nine Pandits.)

(N.B.—Of these three are of opinion that, having regard to custom, such marriages, though ordained by the Shastras, should be adopted only as an inferior alternative, *i.e.*, as a Gaunakalpa.)

(3) Post-puberty marriages are permitted by the Shastras as a Gaunakalpa. (Twenty-five Pandits.)

(4) Post-puberty marriages are allowed as an Apatkalpa, the Apad contemplated arising from such circumstances as follows:—Difficulty of securing suitable bridegrooms, the poverty of girls' parents or guardians, domestic inconveniences. (Thirty-three Pandits.)

(N.B.—Though these Pandits use the word 'Apad' in their replies it is clear from their explanation of the word 'Apad' that they recognise post-puberty marriages as a Gaunakalpa, *i.e.*, inferior alternative.)

(5) Post-puberty marriages are recognised by the Shastras only as an Apatkalpa, the Apad contemplated arising from circumstances altogether beyond the control of the girls' parents or guardians, such as prolonged famine, foreign invasion, and similar acts of *vis major*, or from the prolonged illness, personal deformity, etc., etc., of the girl. (Fifteen Pandits.)

(6) Post-puberty marriages of Brahmin girls are not prescribed by the Shastras either as a Mukhya, Gauna or Apatkalpa. (Thirteen Pandits.)

242. *All-India Brahmin Conference at Benares, November 1928.*—We do not deem it necessary or profitable to discuss the various texts as these have been amply discussed and contrary conclusions arrived at by individual theologians. The latest pronouncement is by the All-India Brahmin Conference at Benares on Kartik Vadya 11, Thursday, Samvat 1895 (4th November 1928) an extract from the proceedings of which is given below:—

## Questions.

(1) From what age to what age, according to the Shastras, is the proper time for marriages of men and women?

(2) According to the present circumstances and in keeping with the Shastras, to what extent is regulation thereof proper?

(3) Is marriage after puberty a primary obligation or secondary or a matter of necessity in difficulty?

(4) After puberty, what is the significance of the texts declaring a woman a Vrishali?

(6) Who are the knowers of the Law; and what sort of changes in the Law can they make?

*N.B.*—Questions 5 and from 7 onwards are not relevant to this inquiry.

### Answers.

(1) The permissibility of marriage (of a girl) even before 8, in case an eligible match is available, is not disproved. But if any community, looking to the welfare of that community, makes a rule that a marriage before 8 should not be performed in that community, it deserves approval, as such a rule is not against the Shastras. This preliminary proposition is accepted unanimously by us all in this Conference.

(2) The marriage of a girl of 8 is most commendable. According to the authorities, the fruit of gifts lasts upto one birth; the fruit of the gift of gold, house or a *Gouri* (a girl of eight being a Gouri), lasts upto seven births. As a marriage stands in the place of Upanayana (Sacred Thread ceremony) in the case of women, and as the 8th year is the primary time of Upanayana for a Brahmin, and the gift of a girl of eight carries special merit, any rule restricting that a Brahmin girl should not be married before 10 is not acceptable to us. This is so by reason of the text “after that, *i.e.*, 10, she is in menses (unclean)”. The marriage of girls of all castes after 10 would infringe the primary time. As the time for the Sacred Thread ceremony of Kshatriya and other castes is not fixed before 10, if those communities make any rules to regulate their marriages for their communal welfare, it would not be contrary to Shastras, in our opinion. This opinion would hold good with reference to Shudras too.

(3) In the case of marriages outside that limit, though there are certain Smritis which say that a girl becomes a Vrishali after 12, yet, as a girl really becomes Vrishali only after puberty, she can be married after 10 and before

## Answers.

(1) The post-puberty marriage of Brahmin girls is recognised by the Śāstras. (One Pandit.)

(2) According to the Śāstras, Brahmin girls should be married only after puberty, *i.e.*, post-puberty marriages are prescribed as a Mukhyakalpa. (Nine Pandits.)

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(3) In the case of marriages outside that limit, though there are certain Smritis which say that a girl becomes a Vrishali after 12, yet, as a girl really becomes Vrishali only after puberty, she can be married after 10 and before

puberty, in times of difficulty, with a Prayaschitta for transgressing the primary time of marriage.

(4) (a) Pandit Rajeshwar Shastri and others are of opinion that Brahmin girls remaining unmarried after puberty are unfit for association even after a penance.

(b) Pandit Malladi Rama Krishna Shastri and others are of opinion that such girls are unfit for association even after Prayaschitta is done within three years after puberty while Pandit Rajeshwar Shastri and others say that she is unfit for association even after Prayaschitta, if, though asked by her father within three years, she refuses to marry. If she remains unmarried for the fault of her father, she only incurs a sin but does not become a Vrishali. If for three years (after puberty) she remains unmarried then her degradation as Vrishali cannot be removed in our opinion even by Prayaschitta.

(c) The opinion of the Bengal Pandits is that a girl remaining unmarried through her father's fault incurs an ordinary sin. If she wilfully remains unmarried she becomes a Vrishali but becomes fit for association after Prayaschitta. Excommunication holds good only if she absolutely refuses to marry.

(d) The same opinion is held by Mahamahopadhyaya Tata Subraya Shastri and Vindhyaeshwari Prasad Shastri. Subraya Shastri accepts higher and lower Prayaschittas.

(e) All agree that in the case of girls of Kshatriyas since they are allowed to choose their own husbands, their becoming Vrishali consequent to puberty is removed by Prayaschitta and thus they become fit for association.

Our decision, reviewing all these contentions, is as follows :—

The Dharma Shastras whole-heartedly condemn the marriage of a girl after puberty. Sometimes such a marriage, in an exceptional difficulty, is allowed after Prayaschitta : but those who can perform the marriage at the primary time should not resort to this course, making it as an excuse, because this course is applicable in an extreme difficulty. The decision whether a difficulty is great or small rests with the respective community. As regards fitness for association, the custom of each family is the guiding authority. Excommunication is to be made

only where a girl wilfully refuses to marry after attaining puberty.

*4th November 1928.*

VIRUPAKHSHA SHASTRI.

D. SHRINIVASA CHARU.

SHRI SHASHINATH JHA.

SHRI CHANDIDAS TARKATEERTHA OF  
NUDDEA.

DEVASHIKHAMANI RAMANUJACHARYA.

Out of the 5 questions submitted to me, I agree with the above except as regards the first and fourth. On the 1st question, I hold that the marriage of a girl is proper from the 8th year upto, but before the possibility of, puberty. As to the 4th question, a Vrishali certainly becomes fit for association after a Prayaschitta.

PANDIT NAND KISHORE.

243. The decision of the Dharmacharyas or Religious Heads was as follows:—

“ Questions 1 and 3.—The best time for the marriage of girls is the 8th year from conception; 9th and 10th years the next best; after that upto puberty ranks low; while after puberty it is absolutely reprehensible.

2.—The prohibition of marriage from the 8th year to the 10th, even according to circumstances, is quite improper.

4.—The texts declaring a girl Vrishali are to be interpreted to mean that she becomes so only for religious ceremonies.

6.—Manu and others are knowers of the Law, but even they have no authority to make any change in it independently by themselves.”

244. In many instances Smriti texts probably crystallized the then existing practices, but Hindu theologians look upon all Smritis as of equal authority and only of lesser value than any Sruti or Vedic texts if the latter are not consistent with Smriti texts. In the changed circumstances of the country, the practical enforcement of some of the Smriti texts is impossible. We have indicated

in the list of witnesses those who have cited texts in their evidence.

245. We have accepted the latest pronouncement of the Benares Pandits quoted above as a statement of the effect of Shastric texts from the extreme orthodox point of view. The other view is of those who hold that a girl's marriage at 12 or within 3 years after puberty is the most meritorious. A third view is that of Pandit Shriniwas Shastri to the effect that marriage before puberty is first best, within 3 years after puberty second best, and after that the power of the father to give the girl in marriage ceases (*vide* Appendix XIV). Mr. C. V. Vaidya, M.A., LL.B., a Marathi writer of considerable importance, holds that child marriages are not warranted by the Smriti texts (*vide* Appendix XIV.)

246. *Islamic Law*.—We shall next deal with the Muslim point of view as regards the proposed legislation being against the teachings of Islam. Islamic Law is based on four sources—The Quran, Hadis, Ijma and Qayas. It is conceded by the theologians examined before this Committee, that there is no express provision in the Quran, enjoining the celebration of marriage or the bringing about of consummation at any particular age. In short, the Quran is silent on these points, and legislative enactment on the subject would not be at variance with the injunctions of the Quran.

247. The next source is the Hadises. We do not propose to enter into a controversy as to the authenticity or otherwise of certain Hadises but it is clear that all Hadises that have come to our knowledge favour post-puberty consummation. For instance, certain Hadises are quoted to show that the Prophet preferred marriages soon after puberty; but there are some other Hadises from which it may safely be concluded that marriages after the age of discretion were preferred by the Prophet. It cannot therefore be argued that legislation on this point is strictly at variance with the sayings of the Prophet.

248. The third source of Islamic Law is Ijma, *i.e.*, the consensus of opinion of learned men. The Muslim theologians of India are not agreed on the point as to Marriage and Consent legislation being an interference with Muslim religion; and thus there is no Ijma. We endorse the remarks made by the witness Syed Nawab Ali, Principal,

Bahauddin College, Junagadh, in his evidence, "Unfortunately under the present circumstances, Ijma is very difficult here in India. How many are there in India who can be considered as qualified to give opinion? How many are there who have spent their life in the study of religion and religious laws"?

249. The fourth source, *viz.*, Qayas, would certainly favour such legislation when once it is proved that it is in the interests of the community at large.

250. It may also be noted that according to Muslim Law, marriage is not merely a civil contract, but is an act enjoined by religion, the object of which is the procreation of "Aulade Saleh", meaning by that expression, progeny fit to serve God and His creatures; and if it be conceded, as it ought to be, that the offspring of early marriages are weaklings and unfit to serve God or humanity, it follows that such marriages are against the spirit of Islam.

251. So far as the Muslim countries of Turkey and Egypt are concerned, there is marriage legislation even to the extent of declaring marriages void before a given age, and such legislation is nowhere objected to on religious grounds.

252. All this goes to prove that it is not so much a violation of any religious injunction as in the case of Hindus, but a restriction on the liberty to marry at any age, and to consummate at puberty. This freedom has been already curtailed by a Law of Consent at 13, and raising the Age of Consent further or enacting a Marriage Law will not militate against their actual practice, except in cases, where there are consummations before puberty or before the prescribed age.

253. *Is maternity soon after puberty detrimental to mother or child?*—The occurrence of puberty indicates a capacity to conceive. This is admitted by all medical witnesses. A very large majority however asserts that it does not mean that the girl is fit for conception which may be the result of cohabitation. Havelock Ellis is quoted as being of opinion that a girl at puberty is biologically fit to be a wife and mother. This view is not accepted by other medical authorities. In fact, several medical witnesses examined before this Committee assert that their experience warrants them in saying that 16 is the minimum

age when conception for an Indian girl is safe both for mother and child.

254. We do not agree with the view that maternity soon after puberty, at whatever age it may occur, does not affect the health of the mother and child. We accept the contrary view given by medical witnesses in Chapter VIII of our Report. It is possible that the older generation may have been strong though born of mothers under 16. Modern conditions are however so vastly changed and life has become so strenuous, that every single cause of deterioration of men and women should, as far as possible, be eliminated. Early maternity is one such cause, though it may or may not be the sole cause, of deterioration. If her frame were more developed, a girl at first childbirth would certainly offer more resistance to disease and surmount to a greater extent other adverse conditions which cause deterioration.

255. *Will the morals of girls suffer by late marriage?*—A large number of witnesses, including school teachers who have to deal with girls of this age, have declared that there is no fear to the morals of the girls, if kept unmarried till 14 or 16; there are others who have expressed their apprehensions the other way, more so about girls in rural areas and those working in factories. Judge Lindsay's book referred to by some witnesses states facts about early cohabitation of American girls and boys, but the conditions of women's outlook on life and the freedom and opportunities for thrills they have in America, have no existence here. There are many communities in India which have post-puberty marriages and consummations after 16 and yet there is no danger to their morals. In fact, more than 50 per cent. of the Indian girls are married after they have completed the 15th year. Moreover, the fact that a large majority of child widows, with no prospects of marriage, are free from scandal is a good argument to prove that it is very unlikely that girls of 14 and 16 with marriage prospects will go wrong. The traditions of Indian homes and the care taken of unmarried girls are enough to dispel any reasonable apprehensions of girls of such ages going wrong. The Committee feels that this argument is put forward without a genuine belief in its cogency and without realizing that the argument, if based on facts, may be a serious reflection on Indian homes.

256. The remarks of Western authors quoted by some witnesses cannot possibly apply to conditions in India. These authors are referring to inordinately late marriages in Western countries and recommend early marriages—*i.e.*, earlier than the present practice in Western countries. They have no idea of marriages of 1 to 14 and their remarks do not refer to the marriage age below 15 in India. To support marriages at ages earlier than their present practice in the West, they quote instances of young girls having become mothers even before 16 and show that at that age parturition is not difficult. The context in which the remarks occur show that they could not be thinking of recommending marriages at ages below 15, such as take place now in India. We have therefore no hesitation in saying that marriage deferred till 14 or even 16 will not adversely affect the morals of Indian girls.

257. *Will the new law cause dissatisfaction?*—There is no doubt that a certain amount of dissatisfaction will be caused amongst the orthodox Hindu and Muslim classes, but it can only be temporary. We realize that the proposed Law of Marriage would affect the practices of these classes as they were never affected before, either by the law of 1891 or of 1925. On the other hand, the dissatisfaction, if such a law is not passed, will be equally great, if not greater. Reformers, having to a certain extent done what they could, feel that the time has come when legislation should supplement their efforts, and will not fail to accuse the Government if this much needed reform is hindered or delayed any longer. The advanced women of the country are determined to have the law and are not likely to take the rejection of a Bill like Sarda's with equanimity. There is no innovation in established usage which may not bring about a certain amount of dissatisfaction. Even among the orthodox, a large number is indifferent and will acquiesce in the change; there is yet another considerable section of the orthodox, which is waiting to have the cover of a preventive law to postpone marriage and consummation beyond the prevailing practice; and it is only the rest that will seriously feel the new law a grievance. We have been advised by witnesses that this risk of discontent may be taken, and we think that beyond a ripple on the placid waters of orthodoxy—Hindu or Muslim—there will be little to apprehend.

258. *Early marriage secures unadulterated love towards husband and members of his family and preserves the Joint Family system.*—Some witnesses have advanced a novel ground for not merely defending but positively advocating the practice of early marriage and early consummation. Early marriage, by introducing a girl of tender age into her husband's family enables her to absorb the traditions of that family and secures her unadulterated love to her husband and the other members of the Joint Family. The introduction of girls of advanced ages creates discord and disunion and disrupts the family, instead of promoting its welfare and unity. It seems to us that though there may be an element of truth in this statement, it is yet an over-exaggerated picture of the actual facts. The severance of natural ties of kinship and the promotion of artificial bonds of love depend on personalities and on a variety of reasons, the least of which appears to be the age at which the girl is introduced into a family. The Joint Family system endures as well in communities where girls beyond the age we have now recommended are brought into the family by marriage after puberty.

259. But even granting all that is claimed in favour of the system, it has to be remembered that there is a growing tendency towards the celebration of marriages of girls between 10 and 12 years. The age that we have recommended is not so far in advance of the ages now in practice that it can make any vital difference in this connection.

260. *The law derogates from the natural rights of a husband.*—The objection, that a law fixing an age of Consent in marital cases derogates from the rights of the husband conferred by marriage, involves the assumption that the husband has the absolute right to cohabit with his wife, irrespective of her age or physical condition, or that at any rate he is the best and only judge of her fitness and maturity for such cohabitation. Such a wide and unfettered right has never been recognised in favour of the husband by any law. The Hindu Law prohibits consummation before puberty and the spirit of the Islamic Law is also against it. Moreover, the Hindu Law prescribes in great detail the limitations which a husband should observe in cohabiting with his wife. There has also been a widely prevalent practice, in some instances accompanied



by a religious ceremonial, both among Muslims and Hindus, whereby irrespective of the age when a girl is married and irrespective of puberty, a wife is not permitted to join her husband before a certain period. These are all restrictions and limitations which derogate from the absolute right which is now claimed on behalf of the husband and which have been long acquiesced in by the community. That these restrictions are falling into desuetude may be a reason for replacing them by others and not for establishing a right which never existed. Nor has the law of the land at any time recognised such a right. It is perfectly true that the cohabitation by a husband with his wife was not considered a crime, whatever the age of the girl, before the Indian Penal Code of 1861. But if through such consummation an injury of a serious nature resulted to the girl, the husband was liable to be punished for such injury and the marital rights of a husband could not be advanced as a bar to such prosecution. Justice Wilson, in the case of *R. vs. Hari Mohan Mythee*, I. L. R., 18 Cal. 62, observed "It by no means follows that because the law of rape does not apply as between husband and wife, if the wife has attained the statutory age, that the law regards a wife over that age as a thing made over to be the absolute property of her husband, or as a person outside the protection of the criminal law. Under no system of law with which courts have to do in this country, whether Hindu or Muslim, or under any law framed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her, as for instance, if the circumstances be such, that it is certain death to her, or that it is probably dangerous to her life. The law, it is true, is exceedingly jealous of any interference in matters marital, and very unwilling to trespass inside the chamber where husband and wife live together, and never does so except in cases of absolute necessity. But the criminal law is applicable between husband and wife wherever the facts are such as to bring the case within the terms of the Penal Code." Such a case of "absolute necessity" has been made out for an advance in the age of Consent as will be clear from Chapter VIII.

261. It need only be pointed out that the present law fixing the age of Consent already derogates from the

rights of a husband as advocated in its extremest form, and that any proposal to increase the age of Consent will be a mere extension of the principle and not a novel departure.

262. *Age of marriage already going up; why legislate?*—An objection is raised that as the age of marriage and maternity is going up, in fact, there is no need to legislate to achieve the same end. The figures in Appendix V-G show that the pace of progress in the increase of the marriage age has been so slow since 1891 that the objective is not likely to be reached even within half a century. While, therefore, it may be argued that legislation is unnecessary when natural causes are already working towards the achievement of the desired result, it may with greater propriety be contended that legislation is a very effective means of accelerating progress towards the objective and should therefore be resorted to. As a matter of fact, though the marriage age has advanced beyond 8 and 10 to 12 and 13, the age of consummation and maternity is practically where it was. With an increase in the age of marriage, there is perhaps a smaller number of widows below that age, but the increase in the age of marriage is not general, nor is consummation postponed to an age when maternity is safe.

263. *Interval after enactment of 1925 too small to effect change.*—It is true that the law has been changed only in 1925 and the interval between 1925 and now is short. It should however, be remembered that even in 1925, the legislature was prepared to raise the age to 14 and 15 inside and outside marriage. Our investigation has elicited many new facts to justify a review of the whole position and an advance being made.

264. *Abuse of Law by false accusations or Police oppression.*—The fear of false accusations by enemies and oppression by the Police has been expressed by some witnesses and has been put forward as a strong argument against such legislation. It may be noted that this very objection was raised in connection with the legislation of 1891. Nearly forty years' working of that law has failed to establish that the fear is well grounded and not a single case of false accusation by enemies has been brought to our notice. So far as harassment by the Police is concerned, it has to be noted that the offence is now non-cognisable

and the recommendation of the Committee is that it should continue to be so. Moreover, the preliminary jurisdiction in such cases is limited to the District Magistrate or the Chief Presidency Magistrate and Police investigation, if ordered under section 155 of the Criminal Procedure Code, is confined to investigation by a Police officer of a rank not below that of an Inspector of Police. The general safeguards against false and frivolous or vexatious complaints which are provided in the code are sufficient to remove all reasonable apprehensions on the subject.

265. It may also be pointed out that where the girl is above the age of 12 years, the Committee recommends that the offence may be compoundable with the leave of the court, the father or the guardian of the girl being the consenting party. The chances of false accusation or harassment by the Police will therefore be made even rarer, if they are not altogether eliminated.

266. *The law of an Age of Consent a dead letter in marital cases, now and hereafter.*—It has been urged that the Law of Consent in marital cases has been, and is bound to be, ineffective on account of the very nature of the offence which it seeks to prohibit. The privacy and secrecy necessarily involved, the anxiety of all those who may be cognisant of the offence to suppress the facts and not to give information and the utter unwillingness of the very victim to lay a complaint against the husband are powerful factors in making the law nugatory and of little effect. It is also pointed out that if a law prohibiting marriage below a certain age were to be passed, the need for fixing an age of Consent automatically disappears. Superfluous legislation of the kind should be avoided.

267. It must be candidly admitted that the Law of Age of Consent has not been effective. The evidence has distinctly proved that violations, both of the older law and of the amended law, are not infrequent. In some Provinces like Bengal and Gujrat, it may be even stated to be common and yet cases which have come to light through courts of law are extremely rare. But it would be incorrect to presume that such cases can never come to light. On the other hand, the statistics of crimes in the different Provinces (*vide* Appendix IV) show that cases of rape by the husband occasionally come before the courts and the delinquents are punished. Taking the three years 1925

1926, and 1927, we find that in Bombay there were 4 cases resulting in 1 conviction; in Madras there were 11 cases ending in 2 convictions; in the Punjab, 18 cases with 6 convictions; in Behar and Orissa, 16 cases with 5 convictions; in the Central Provinces and Berar, 30 cases with 5 convictions; and in the United Provinces, 35 cases with 11 convictions. Bengal reports 17 cases instituted, with however, no convictions. It is perfectly true that these figures bear no comparison to the number of cases of violation of the law; neither do they indicate that the law is a dead letter and incapable of application in such cases.

268. But the effect of the law—particularly a criminal law—cannot accurately be gauged by the number of prosecutions instituted or the convictions which have resulted therefrom. Such legislation has always a wider effect, as it prevents crimes more often than it punishes them. Even with reference to a law so elusive in its operation as the law of the Age of Consent, we have no reason to doubt, as stated in paragraph 37 in Chapter III, that it has had a certain educative effect and that it has in some instances prevented the commission of such crimes.

269. It has, moreover, to be remembered that the law is to a large extent unknown—that wide publicity which is essential to ensure a due respect of the law has not attended it. Among the recommendations of the Committee is one which suggests that the State, directly and through quasi-public and private institutions, should take all steps to give wide publicity to the law so that a knowledge of it may be brought home to all the citizens of the land. Such publicity will probably increase the chances of the offences coming to light in large numbers. But whether more offenders are brought to justice or not, it is undeniable that the educative effect of the law will be much greater than at present and what we have stated as the preventive effect of the law will also be greater. No man in this country lightly risks the penalties of the law and with regard to an offence where not the habitual criminal but the normally law-abiding citizen is concerned, the chances of running such risks will, we believe, be not very great.

270 *With a Law of Marriage, Age of Consent Law superfluous.*—It has been further suggested that the enactment of a Law regarding Marriage will make the Law of Consent superfluous. But the argument is untenable for a

variety of reasons. Even when the age of marriage permitted by law coincides with the Age of Consent, it will still be necessary to have the latter legislation. It must be remembered that there is no proposal to make the marriage void in case it is performed before a certain age. In dealing with the recommendations we have given reasons why we reject the proposal to declare such marriages void. We may therefore expect that, even with a Marriage Law, there will be cases of violation of that law by some who perform the marriage in the hope that the real age may not be found out and by a very few who marry, particularly at the initial stages, and deliberately break the law. It seems necessary that at least to cover such cases, there ought to be an Age of Consent Law. Moreover, the number of marriages of girls of varying ages which have already taken place, is indeed very large. The latest census shows that there were on that date (1921) over  $6\frac{1}{2}$  millions of girls out of a total of  $16\frac{1}{2}$  millions between the ages of 10 and 15 who were in a married state (*vide* Appendix V. D.). The number of girls below 10 who were married was 26,16,473. The figures may vary slightly but will not be very different at the present time. The need for protecting these girls, as also those that may be married between the date of the Marriage Law and its coming into operation, is obvious, as most of them will be below the statutory age. The law fixing an Age of Consent is therefore imperatively necessary.

## CHAPTER VII.

## SUGGESTIONS AND RECOMMENDATIONS.

271. The statement of facts contained in the preceding chapters clearly establishes that the practice of early consummation is widely prevalent and that the consequences are sufficiently serious to need remedial measures. The conclusion has been forced upon us that the age of Consent in marital cases should be raised and that the Law of Consent can be of use only if it is supplemented by a law fixing a minimum age of Marriage. The specific recommendations on these points and an examination of the reasons for and objections against such proposals will be found in Chapter IX of the Report. We are also of opinion that the age of Consent in extra-marital cases should be raised very considerably and our proposal in regard to it, with the reasons therefor, will be found in Chapter X.

272. But our enquiry has made it clear that these recommendations by themselves will not be sufficient to achieve the object in view. Various suggestions have been pressed on our attention either to lessen the rigour of the application of the law, or to make the law more effective or to provide safeguards against an abuse of the processes of the law. Alternative proposals to achieve the desired object, have also been suggested. We are of opinion that our main recommendations require the adoption of measures, both legal and administrative, of an auxiliary nature, if they are to be effective and acceptable to the general public.

We shall therefore examine here the various suggestions placed before us and give our recommendations thereon.

## AGE OF CONSENT LAW.

273. *Nomenclature of the offence in marital cases.*—It has been suggested by many witnesses that it is anomalous to call the offence of cohabitation by a husband with his wife below a certain age, rape. That word is generally associated with ideas of violence, non-consent and intrinsic immorality which are absent where the conduct of a husband is in question. To denote both those acts under the common terminology of rape offends sentiment as well as juridical notions. Sir Hari Singh Gour recognised the force of this criticism when in his bill he proposed to call the offence “illicit married intercourse”. Several witnesses have suggested that a different nomenclature may be given to the offence and some of the Bar Associations, notably the Madras Vakils’ Association, have emphasized the same view. It may be added in fairness to them that the suggestion is not put forward with a view to mitigate the gravity of the offence. We feel bound to take note of this sentiment and to consider if the suggestion of Dr. Gour may be accepted. The word ‘illicit’ is however open to an obvious objection, and we have come to the conclusion that the offence may more appropriately be called “Marital Misbehaviour”. This phrase has not been before the public and has not been considered by them, but we have no doubt that it will prove more acceptable. The new offence may conveniently fall under Chapter XX of the Indian Penal Code which deals with offences relating to marriage. *We recommend that sexual intercourse by a husband with his wife below 15 years of age (vide paragraph 397, Chapter IX) be made an offence, and that the said offence be called “Marital Misbehaviour” and be included in Chapter XX of the Indian Penal Code dealing with offences relating to marriage.*

Consequent on this recommendation we further make the following two recommendations.

*That in clause 1 (a), Section 561, Criminal Procedure Code, the words ‘Marital Misbehaviour’ be substituted for the words beginning with ‘rape’ and ending with ‘wife’; and that Sections 375 and 376 of the Indian Penal Code be confined to rape outside the marital relation.*

274. *Punishment for Marital Misbehaviour*—Where the girl is below 12.—The question of punishment for the vio-

lation of the Law of Consent in marital cases raises many difficulties. The possible effects of a conviction in such cases have been referred to in an earlier chapter. The need for a distinction in punishment according to the age of the girl and the extent of such distinction have now to be considered. The extreme divergence of views on the subject only adds to the complexity of the problem. At the one extreme are those who advocate a bare fine or at the most a nominal sentence; and at the other are those who feel that inconsiderate conduct on the part of a husband pledged to safeguard the health and person of the wife, ought to be more severely dealt with than similar conduct of a stranger. As is so often the case, the line of practicality is perhaps somewhere between the two extremes. Where a girl is below 12 years of age the punishment is, under the present law, transportation for life or imprisonment which may extend to 10 years. The law has been in existence for thirty-eight years and no complaint has been made on the score that the maximum punishment is disproportionately high. It is no doubt true that the actual sentence inflicted by the courts has fallen far short of this maximum. Even so we can find no reason to recommend a reduction in this maximum. The suggestion has however been made that the alternative of transportation for life may be eliminated so as to make it possible to bring such cases under section 562 of the Criminal Procedure Code. The suggestion commends itself to us and *we recommend that the offence of Marital Misbehaviour be made punishable with imprisonment of either description for 10 years and fine when the wife is under 12 years of age.*

275. *Where the girl is above 12.*—Where the girl is above 12 years but below 15 the age we have recommended, the punishment has necessarily to be less severe. Under the present law, where the girl is between 12 and 13 years, the punishment is imprisonment which may extend to 2 years. We have been presented with three alternatives in considering the punishment after 12 years; firstly, to maintain the same punishment as at present upto the increased age, secondly to maintain the present state of the law and to suggest a punishment of one year's imprisonment between 13 and 15, and lastly, to suggest a reduced punishment where the girl is between 12 and 15. We have rejected the first two proposals as the one is in our opinion



too severe for the advanced age, and the other involves such nice distinctions in age as to make it impracticable. *We recommend that the punishment may be imprisonment of either description which may extend to one year or fine or both when the wife is between 12 and 15 years of age.*

276. *Alternative suggestions regarding punishment.*—Two specific suggestions have been put forward to regulate punishment in cases of Marital Misbehaviour. Both of them involve the abandonment of the distinction based on the age of the girl-wife. The first suggestion is that where death results from the commission of the offence, the accused may be sentenced to imprisonment of either description for a period which may extend to 7 years and fine; where death does not result, the punishment may be imprisonment for 2 years or fine or both. The basis of punishment will then be more logical. Though the maximum punishment at present is transportation for life where the girl is below 12 years, the courts have generally treated cases where death has occurred as cases under Section 304-A., Indian Penal Code, and have awarded a sentence of imprisonment for 2 years. The law should therefore prescribe a more deterrent sentence in such cases. Further it is argued that Rape and Marital Misbehaviour ought not to be treated as offences of a like nature, and that a substantial difference in the maximum punishments ought to mark the distinction in the gravity of the two offences. The severity of the present punishment in marital cases is against the interests of the girl and a lowering of it may induce persons to bring to light more offences.

277. We recognise the force of the argument but are unable to adopt it because the principle underlying it is different from the principle which we have followed in suggesting punishment. We are clearly of opinion that the age of the girl in most instances has a real bearing on the extent of her injuries. The later the age, the less serious are the consequences likely to be. The proposal would separate cases where death has resulted, and group all other cases under one category whatever the age of the girl may be and whatever the injuries she may have sustained. Where the girl is below 12, though death may not result, the shock to the nervous system may be great and where maternity supervenes, the consequences may sometimes be as disastrous as if death had immediately followed

the act. The proposal does not take note of these conditions or at any rate considers that a maximum punishment of 2 years is sufficient in all such cases—a position which we cannot endorse.

278. Moreover in the course of our enquiries we have been impressed by the fact that pre-puberty consummations are not uncommon in some parts of the country. As only a small percentage of girls attain puberty before they reach the age of 12, it is probable that these pre-puberty consummations generally take place when the girl is below 12. The evidence before us also supports this conclusion. The practice is so abhorrent, and opposed to all considerations of health and religion that it ought to be severely dealt with. A modification of the sentence where the girl is below 12 years, which would be the result of accepting the proposal would lend colour to the view that the offence is not sufficiently grave. We are therefore not prepared to accept the suggestion.

279. The second suggestion that has been strongly pressed on our attention is that the offence should be punishable according to the nature and extent of the injury to the girl. The suggestion involves a classification of injuries which may result from the consummation of a marriage. The definitions of 'hurt' and 'grievous hurt' as contained in the Indian Penal Code do not seem to be appropriate in this connection, as any 'bodily pain' amounts to 'hurt' and the specific requirements of 'grievous hurt' will rarely be found in cases of Marital Misbehaviour. Nor are the materials at disposal sufficient to prepare a catalogue of graded injuries which may result in such cases and we are extremely doubtful if with the help of the best medical opinion it can be done.

280. Further, there will be serious difficulties in the application of the law. The nature of the injury being an essential for the assessing of punishment, a medical examination of the wife would in all cases be necessary, a proposal which we feel sure would be unacceptable to the public. Moreover, all traces of injury may have disappeared by the time such an examination takes place and the accused may therefore escape the punishment which ought to be his award.

281. Finally, there is an overwhelming ground for rejecting the proposal. There is no doubt that serious cor

sequences accrue to the girl even where no apparent and manifest injuries are traceable. The shock to the nervous system often leads to various diseases. Phthisis is more prevalent among those who practice early consummation. The consequences of maternity, leading sometimes to a paralysis, complete or partial, of the lower extremities, have been adverted to. The weaklings that are born of such mothers and the large infantile mortality resulting therefrom, have been put forward by us as some of the reasons for penalising the act and for fixing an age of marriage. These are results often far more disastrous than any external injury can be. It seems to us that it can only be by ignoring these considerations, which form the main and fundamental justification for an advance in the age of Consent, that we can accept the suggestion that the extent of injury of a demonstrable nature at the time of the act, can alone regulate the nature of the punishment ranging from bare fine to imprisonment extending to 10 years. We are therefore unable to accept the suggestion.

282. *First offenders.*—It may be noticed that in our recommendation regarding the punishment of a husband for Marital Misbehaviour we have suggested that if the girl is below 12 years of age, the maximum should be imprisonment of either description for 10 years and fine, and if the girl is above 12 years and below 15 years it should be imprisonment which may extend to one year or fine or both. The reason why in the former case we have impliedly suggested the deletion of the punishment of transportation for life, is to enable the accused under 21 years of age to have the benefit of Section 562 of the Criminal Procedure Code, and to be treated as a first offender if the court so chooses. Where the girl is above 12 years, the punishment suggested is such that whatever may be the age of the accused the benefit of the section can at the discretion of the court be extended to him. We recognise that instances where this section is made applicable must be very rare.

283. It may be objected that where the girl is below the age of 12, the offence is so serious that the accused ought not to escape all punishment. We have in mind, however, cases where the boy is between 14 and 18 and where he has little responsibility in the matter and is the creature of circumstances brought about by the parents or

guardians of the parties. There are undoubtedly instances where the consummation of boys and girls of tender ages arranged by the elderly members of the family; and in such cases, if no injury has resulted to the girl, it seems hard that a boy below 18 should be submitted to the indignity and penalty of imprisonment for what he is virtually not responsible. Similar cases may occur where the girl is above 12 years. It will be in the fitness of things that judges should have the discretion in suitable cases to give the accused the benefit of section 562 of the Criminal Procedure Code.

284. *Modifications in Section 562, Criminal Procedure Code—Bonds for separate living, custody, etc.*—The section cannot however be made applicable, in terms, to the offence of Marital Misbehaviour, and considerable modifications are required to adequately deal with persons accused of that offence. While the offender may be released on probation of good conduct and the court may require him to enter into a bond to appear and receive sentence when called upon, during such period as the court may direct, the consequential provisions in the bond to keep the peace and be of good behaviour may not be appropriate or sufficient. In the first place, the period of probation cannot be limited to a maximum of three years as provided in the section but should be co-terminous with the period which must elapse before the girl-wife reaches the statutory age. Secondly, the bond must also provide that the custody of the girl may be entrusted to such persons as to ensure the separate living of the girl and the husband during the probationary period of the latter, that an allowance for the maintenance of the girl by the husband or the parent or guardian of the husband may be made in suitable cases and that such other conditions as the judge may deem necessary be imposed so as to ensure that the offence is not repeated. We therefore recommend that by the addition of a suitable Sub-section to Section 562, Criminal Procedure Code, it be provided that in the case of Marital Misbehaviour the bond may, in addition to the present provisions, also provide for the custody, separate living, and maintenance of the girls and for such other conditions as the court may deem necessary to ensure the prevention of a repetition of the offence, the bond being executed either by the offender, or by his parent or guardian if the husband is a minor.

285. *Power to receive reports and to vary custody and its conditions.*—The object of providing for marital cases under a sub-section of section 562, Criminal Procedure Code, is to enable the court to apply the provisions of sections 122, 126 A, and 406 A of that Code so far as may be, which under the present section are applicable to cases dealt with under section 562, Criminal Procedure Code. It may be desirable to vary the order, to change the securities and to demand fresh securities and the judge must therefore be invested with such powers as would enable him to do so. But in addition to these powers, the judge should have the power to vary the custody of the girl or to grant increased maintenance, if necessary. The custody to which the girl would be entrusted would ordinarily be the custody of the parents, guardians or where these do not exist or are undesirable, the nearest relatives willing to undertake the responsibility. In rare cases where the girl has no parents or guardians and no relatives willing to take charge of her, or where such exist but the court considers it extremely undesirable that the girl should be in their custody, it ought to be open to the court to entrust the custody of the girl to any organised Association such as a Rescue Home, Society for the Protection of children or similar bodies for the period which must elapse before the girl reaches the statutory age. Where a girl is entrusted to the custody of her parents, guardians or relatives or to organised Associations, it is desirable that the court should receive periodical reports regarding the welfare of the girl. In cases where either on such report or other information the court is satisfied that the custody to which the girl has been entrusted is not satisfactory, it may vary the custody and pass such further orders as may be desirable. It is also obvious that the amount of maintenance may require alteration from time to time according to the age of the girl. We include under maintenance grant not merely the bare sustenance amount but the usual auxiliary expenditure for clothes, education, etc. *We therefore recommend that, where girls under the prescribed age are made over to the custody of any individual or institution, under the foregoing recommendation, and similar recommendations made elsewhere, the court be empowered to receive and examine periodical reports from the party concerned as to the progress, good behaviour and other particulars essential to enforce a compliance of the law and the conditions of*

*the bond, and to pass orders from time to time rescinding or varying the order or the terms thereof.*

286. *Bonds where accused is sentenced in Marital Misbehaviour.*—It is obvious that similar bonds for custody, separate living and maintenance may be necessary where the accused is sentenced to pay a fine or to a period of imprisonment on a conviction for “Marital Misbehaviour”. In all cases of fine and in cases of imprisonment where the term is less than the period which must elapse before the girl reaches the prescribed age, the proper custody of the girl and her living separate from the husband must be ensured. In fact this is considered so essential that some witnesses have suggested that the term of imprisonment to which a husband should be sentenced should extend till the girl reaches the prescribed age. *We recommend that where the accused is sentenced to fine or imprisonment in cases of Marital Misbehaviour, a new provision be made for bonds, with or without sureties, being taken from the husband or if he is minor from the parents or guardian for separate living custody and maintenance of the girl-wife till she completes the statutory age of Consent, and the court be empowered to rescind or vary the order or the terms thereof as may be necessary from time to time, by extending the provisions of sections 122, 126A and 406A of the Criminal Procedure Code to such cases.*

287. *The initiation of prosecutions for Marital Misbehaviour—Cognisable offence.*—It is admitted on all hands that the incidence of the crime bears no proportion to the number of prosecutions in the case of rape by the husband. The question naturally arises as to who should initiate the prosecution. It is obvious that the right to complain ought not to be confined to the girl or her parents. Some witnesses have no doubt suggested that they are the only proper parties to launch a prosecution; but the suggestion appears to proceed more from a desire to avoid such cases coming to light than from an anxiety to bring the delinquent to book. As has already been observed, except in the rare cases of very serious and perhaps irreparable injury to the girl or her death, considerations alike of family happiness and social prestige will act as strong deterrents against their moving in the matter. On the other hand, it has been strongly urged by some that the only practical method of making the law effective is to

make the offence cognisable. We are not convinced that with reference to this particular offence its cognisability by the Police will make any great difference. The initial difficulty of getting a complaint made, whether to a Policeman or to a magistrate will still remain to a very large extent. But even if the efficacy of the suggestion is accepted, the volume of public opinion against such a course is so great—and we believe rightly—that we must reject the suggestion. A variant of this suggestion is that the offence be made cognisable if the girl is below 12 years, and that it should not be cognisable if the girl is above that age. The difficulty of making the distinction is obvious. When or how is the Policeman to know if the girl is below or above a certain age? Is he to rely on his informant or on his own judgment and in the latter case, what material could he have to form an opinion before he begins the investigation? It seems to us that though the distinction appears logical it has to be rejected as impractical. *We recommend that the offence of Marital Misbehaviour do remain non-cognisable as in the case of Rape by the husband at present, and likewise we recommend that the offence do remain bailable.*

288. *Liability of public under Section 44, Criminal Procedure Code.*—The present law gives the public at large the right to make a complaint. That this right has not been utilized by the public to any appreciable extent is as clear as the fact that a large number of people, both relations of the persons concerned and friends of the family, either know or have reason to believe that several cases of breaches of the law have occurred. Even with the widest publicity given to the law and the most intensive educative propaganda, it is apprehended that there may not be any enthusiasm on the part of the average individual to concern himself with the domestic affairs of his neighbour, to such an extent as to expose him to the penalties of a criminal law. The suggestion has therefore been advanced by some witnesses that the law should not content itself with conferring the right of complaint on the public, but that an obligation should be laid on them to complain in such cases. Section 44 of the Criminal Procedure Code has been invoked for the purpose, and the desire has been expressed that the offence of Marital Misbehaviour may be included among the offences contemplated by the section, so that

every person aware of the commission of the offence shall forthwith give information to the nearest magistrate of such commission. Apart from the technical reason that all the offences included in the section are cognisable offences, the suggestion is so extreme that it does not commend itself to us. It will place in intolerable burden on the public and will be violently opposed to the sentiments and wishes of the people. We have therefore no hesitation in rejecting this suggestion.

289. *Obligation on Doctors, Nurses and Dais.*—A more moderate and reasonable proposal is that doctors, nurses and dais who attend labour cases or treat girls for injuries should, where they have reason to believe that an offence of this nature has been committed, report the matter to the nearest magistrate. We have examined a number of lady doctors on the suggestion and they have invariably shown great reluctance in undertaking this obligation. They point out that the result will only be to drive the girl away from the regular practitioner to an unqualified and quack doctor for her treatment—a course which will only aggravate the troubles of the girl. It is true that doctors do not enjoy the professional privilege in law corresponding to that conferred on lawyers, and many doctor witnesses have therefore rightly agreed to fulfil their duty should the law prescribe such a course. But we feel that in such cases either the girl will go without any treatment or will be taken to the village doctor and that must be a sufficient reason for our not accepting the recommendation.

290. *Social Reform Organisations and Women's Associations.*—It has been suggested that the right of initiating prosecutions should be given to Social Reform Organisations, Women's Associations and to Vigilance Committees appointed by local bodies. The right being vested at present in the public, it accrues equally to organised bodies. But since a definite individual has necessarily to be the complainant in criminal cases, the President, Secretary or some authorised individual of the association can figure as the complainant. We fail to see what special privileges can be conferred on these associations. Their office-bearers must for obvious reasons be subject to the same penalties as other individuals in cases of false, vexatious or frivolous complaints.



291. *Curtailment of present right.*—But the proposal that the right of complaint should be restricted to the parent, guardian or near relative of the girl and to such Social Reform Organisations and Women's Associations as may be recognised by a prescribed authority requires more careful examination. We have already shown the futility of limiting the right to parents and guardians. Nor is the extension of it to near relatives calculated to achieve the object in view. The exclusive conferment of the right of complaint on the associations above mentioned will be both an undesirable and an ineffectual step. It introduces a novel distinction in criminal procedure. Few associations of the kind suggested are so stable and function so regularly as the conferment of the right would naturally suggest. The number of these institutions is so small and the places where they exist so few, that it will be a travesty of facts to suggest that these associations would serve the purpose of reporting even grave cases of breaches of the law. The rural areas may be altogether wiped out of the map if all hope is concentrated on the manner in which these associations will function. It has no doubt been suggested that associations of the kind will come into existence in very large numbers directly the right is conferred. While we thankfully recognise the growing public spirit in the country, we do not share the high hopes which some entertain of every village and town in India being honeycombed in the near future with Social Reform Associations or Women's Organisations. Nor do we feel that a wide publicity of the law will enable the malevolent section of the society to pursue through motives of ill-will or hatred the peaceful citizen and harass him with false prosecutions. Above all, the right to compromise, albeit it be by leave of the court, the conferment of which we suggest, is a valuable right—must deter the black-mailer and the bitter enemy from launching what probably will prove an infructuous prosecution. On all these grounds, we are unable to accept the suggestion that only recognised associations should have the right to initiate prosecutions or that the present right of the public should in any other manner be curtailed.

292. *Should the offence be made compoundable?*—The suggestion has been made by some witnesses that the offence of Marital Misbehaviour be made compoundable. At

present the law does not permit of such compounding. It has been pointed out that the imprisonment of the defaulting husband would disgrace the family and bring ruin on the girl, and that till the last an opportunity should be available to reconcile the interests of the girl with the demands of the law. The permission to compound, where the two parties are willing to adopt such as a course, will save the girl and the very fact that the accused was placed in the dock and his act given publicity will, it is argued, prove a sufficient deterrent. We are clearly against an unqualified right to compound such cases. It has to be remembered that the parties are not necessarily opposite and contending sides, as is generally the case in criminal complaints, but that both sides have the same interests and are animated by the same motives to avoid punishment to the husband. The difficulty of such cases coming to light has been expatiated upon and where a public spirited citizen or association takes upon himself or itself the odium of initiating such a prosecution, the trouble will be utterly wasted if there is an absolute right to compound.

293. A more helpful suggestion has been that the case should be permitted to be compounded by leave of the court. The other side to the composition would be the father or guardian of the girl. Where the girl's age is on the border line, where the boy is a minor and the guardians have been really responsible for arranging the consummation and in either case if the girl has suffered no injury, it is presumed that the judge would in the exercise of his discretion permit the offence to be compounded. In view of the increase in the age which we have suggested, *viz.*, 15, we feel that this suggestion may be accepted. *We recommend that the offence of Marital Misbehaviour be non-compoundable, if the girl is under 12 years of age, and compoundable, with the permission of the court if she is between 12 and 15.*

294. *Forum for and nature of trials of Marital Misbehaviour—Matrimonial Courts.*—The question what is the proper forum to deal with cases of Marital Misbehaviour would not ordinarily have arisen in view of the safeguard provided by Section 561 of the Criminal Procedure Code. But since various suggestions have been put forward, some of them with great insistence, we feel bound to examine them. It has been urged that the offence of

Marital Misbehaviour cannot be treated as an ordinary penal offence but, being an offence of a domestic nature, it ought to be judged by persons who are better acquainted with the sentiments of the people concerned and more likely to understand the intricate details of family life and customs, a consideration of which is so essential to evaluate the nature or extent of the guilt of the accused. The proposal has therefore been put forward that special courts, called Matrimonial Courts, should be constituted which may be empowered to try cases of Marital Misbehaviour. Special courts have been constituted under the Parsi Matrimonial Act for the trial of cases of divorce, etc., among the Parsis. The suggestion is that the court trying marital cases should consist of the Sessions Judge or an Assistant Sessions Judge and two non-official Justices of the Peace appointed for the particular area by the local Government under section 22 of the Code of Criminal Procedure. We must confess that though the proposal looks attractive, we do not feel that it will be expedient to accept it. Under the present law the offence is triable by a Sessions Judge with the aid of jurors or assessors or by a District Magistrate. The Sessions Judge and the District Magistrate are usually men of experience and the former has the additional advantage of being helped by jurors or assessors. It does not therefore appear that there is any serious danger of miscarriage of justice if the present system continues. The society has often been found to be apathetic in punishing an erring husband, however much it may disapprove of the act. The natural prejudice against punishing a husband may result in such Matrimonial Courts not adequately dealing with the offence—a position which may ultimately lead to a disregard of the law. In any case we feel that the time is not ripe, just at the moment when we are proposing changes in the law, to resort to these experiments and we must give opinion in favour of postponing the consideration of the proposal to a later date.

295. *Village Panchayats or Civil Courts.*—It has been also suggested that Village Panchayats or Civil Courts be empowered to deal with cases of Marital Misbehaviour. The former are in an initial stage of development and cannot be charged with such a serious responsibility, and there is no special advantage in transferring these criminal cases

to the Civil Courts. We are thus unable to accept the suggestion.

296. *Women Magistrates*.—It has been urged that cases of Marital Misbehaviour ought to be tried by women magistrates as they are peculiarly qualified to handle such cases with understanding and sympathy. Several local Governments have appointed women as honorary magistrates but as already pointed out, we are not in favour of a trial by a court lower in rank than that of a District or Presidency Magistrate and women have so far not been appointed to these posts. We realise the importance of associating women in the trial and have recommended the selection of women jurors and assessors in such cases. We do not think we can go further in our recommendations at the present stage.

297. *Women Jurors*.—Closely connected with this is the question of having women jurors or assessors to assist the judge in cases of Rape or Marital Misbehaviour. At present though section 276 of the Criminal Procedure Code does not preclude the enrolment of women as jurors or assessors, the rules framed by some of the High Courts confine the selection of jurors to males only. Under Section 319 of the Code the liability to serve as jurors or assessors is confined to males. The difficulty of extending this obligation to women is obvious, particularly in view of the purdah. But there appears to be no valid reason why women willing to serve in these capacities should not be chosen to serve as jurors or assessors. The need for them is great in cases of the kind that we are considering. The girl complainant in either case, when she is in the witness box, is faced by men all around, from the judge and jury down to the reporting staff and it often proves a cruel ordeal for her to tell her story. The presence of a woman in court, particularly among jurors or assessors, will give her the necessary moral support and help her in the discharge of an unpleasant task. The right of the accused to challenge, either with or without reason, those proposed to be empanelled on the jury may no doubt eliminate the few women who may be summoned. But this may not always happen, and in course of time we hope there will be sufficient women summoned to attend so as to preclude the possibility of such elimination. *We recommend that women willing to serve as jurors and assessors be*

*empanelled in the trial of cases of Rape or Marital Misbehaviour.*

298. *In Camera trials.*—The desire has been very widely expressed that in prosecutions for Marital Misbehaviour, the trial should be conducted in camera and that the public and the press should be excluded from the court house during the hearing. While publicity in judicial proceedings has always been considered a potent factor in securing justice, we recognise that in this peculiar class of cases, a want of publicity may result in prosecutions being more freely undertaken. Under Section 352 of the Criminal Procedure Code the presiding judge has the power to order at any stage of any inquiry into or trial of, any particular case, that the public generally or any particular person, shall not have access to or remain in the court. *We recommend that instructions be issued to trying judges and magistrates that in cases of Marital Misbehaviour the discretion under section 352, Criminal Procedure Code be invariably used.*

299. *Summary trials.*—It has been suggested that cases of Marital Misbehaviour may be tried as summary cases, obviously to facilitate their early disposal. We agree with the view that this particular class of cases require speedy determination and the 'laws delays', if they occur, are specially harassing in such cases and may often lead to justice being baulked by the unwillingness of parties to submit to a trial lengthened out by repeated adjournments. But it seems to us that the remedy suggested is worse than the evil it is intended to cure. The nature and gravity of the offence, the complex question of age which has often to be determined and the consequences of a conviction are reasons sufficient, each by itself, to reject the proposal. We however trust that the need for expedition in these cases will be remembered and that the Government will draw the attention of the trying judges to this aspect of the case.

300. *Prevention of vexatious and frivolous complaints.*—The fear of vexatious or frivolous prosecutions in cases of Marital Misbehaviour, particularly when the right of a member of the public or an association to make a complaint is recognised, has been entertained by some witnesses and various expedients have been suggested to diminish the chances of such prosecutions. It is true that

abuses of the law have not come to light but with a wider publicity of the law, the same state of affairs may not continue. Though we do not share the fear thus expressed, we have to examine the suggestions put forward and see if any of them can be recommended for adoption.

301. *Deposit by complainant*.—It has been proposed that the magistrate who receives the complaint should require the complainant to deposit a certain sum as security which amount may be given to the accused if the complaint turns out to be false. The difficulty of bringing cases to light will be all the greater if the complainant is to be hampered by a deposit. If the complaint is proved to be false or vexatious, the magistrate is already empowered under section 250 of the Criminal Procedure Code to order the payment of compensation and in default of such payment to sentence the complainant to a month's imprisonment. There is also the provision of law under Sections 182 and 211, Indian Penal Code, and we consider these safe-guards are enough checks against false complaints.

302. *Preliminary Enquiry*.—It has also been suggested that there should be a preliminary enquiry by a magistrate before process is issued to the accused. The object apparently is to make it certain that the magistrate is satisfied that a *prima facie* case exists, before the accused is asked to appear before him. Section 202 of the Criminal Procedure Code gives ample powers to a magistrate to hold such an enquiry or to depute a subordinate magistrate or even a non-official to make such an investigation and to report to him the result. If the object of the suggestion is to make a preliminary investigation obligatory, we fail to see the need of such a course in all cases.

303. *Previous sanction*.—The suggestion has also been made that the complainant should obtain the previous sanction of some authority before his complaint is entertained. It has been proposed that the District Magistrate should sanction the institution of the complaint. Some witnesses have proposed that a Director of Public Prosecutions may be empowered in each Province to examine the allegations and sanction the institution of a prosecution in cases of alleged Marital Misbehaviour. We are not convinced of the need of either of these safeguards, involving as they do delays and putting the already unwilling complainant to difficulties and to the incurring of costs, which

are neither justified nor likely to help the advancement of justice.

304. *Suggestions to make the law more rigorous—Abetment by facilitating offence.*—The abetment of the offence of Marital Misbehaviour is clearly punishable under the Penal Code and whoever intentionally aids by any act the commission of the offence is guilty of abetment. The parent who fixes an auspicious day for the consummation of the marriage of his daughter and makes arrangements for the performance of the ceremony preceding the consummation may be guilty of abetment if the girl is below the prescribed age. But it is suggested that the present law of abetment is not sufficient for the purpose. The parent or guardian, though he may not intentionally aid by any act the commission of the offence, may often so act as to facilitate the commission of the act. A father who sends the married couple to a distant place or even to a picture palace without a proper chaperon for the girl, may know that his act is likely to facilitate the commission of such an offence. The law is defective in not bringing such delinquents to book. A provision analogous to that in sections 118-120 of the Indian Penal Code penalising a father, guardian or other person having the custody of a girl who does any act, intending thereby to facilitate or knowing it likely thereby to facilitate the commission of the offence of Marital Misbehaviour, is therefore necessary and desirable. We are unable to recommend the proposal. We do not think that this class of cases would often occur. In any case we cannot take such a spartan view of the duties and responsibilities of parents or guardians as the enactment of such a law would indicate.

305. *Presumption of commission of offence from common residence.*—It has been further suggested that the only method of preventing the commission of the offence is to draw a presumption that the offence has been committed where the married couple reside in the same house, after the girl has attained puberty. It is argued that the offence is naturally covered with such secrecy that there is no effective method of bringing it to light and the presumption required to be drawn is the only deterrent by which offences may be prevented. It seems to us that such a drastic remedy is not called for and in practice will work great hardship. Among Hindus there

are various ceremonial and festive occasions when the husband and wife have to meet under a common roof. A presumption of the kind suggested will mean that these customs must be abandoned—a course not only unnecessary but calculated to evoke deep resentment. In the second place among Hindus in some parts of the country and among Muslims the system of endogamous marriages is prevalent. Children closely related, either as first cousins or by other equally near kinship and already living in the same house, are often married. In every well-regulated household, though the marriage may have taken place, the parties do not come together and find no opportunity to do so till long afterwards. It would be hard and most unfair that owing to the lapses of a few, the husband in every case should be asked to leave the house for having married a girl under the same roof. We are therefore unable to accept the suggestion.

306. *Registration of consummation.*—It has been seriously suggested by some witnesses in Madras that the law may require the registration of consummation. It is argued that the evil to be prohibited is not early marriage but early consummation and the direct way of removing it is to prohibit such consummation before the prescribed age, and to make it obligatory on the husband at the same time to make a previous report as to when the marriage will be consummated. The proposal is so offensive to good taste that it must be turned down. It may be taken as illustrative of the extreme length to which some witnesses are prepared to go, to avoid legislation prohibiting early marriage.

307. *Guardianship of girls.*—The question of the guardianship of the person of the girl receives an additional importance in view of our recommendations regarding the age of Marriage and the age of Consent. Under the personal law of Hindus and Muslims, marriage changes the guardianship of the girl, and the husband becomes from the date of marriage the legal guardian. Several witnesses have suggested that the right of the natural guardians of the girl should continue unaffected notwithstanding marriage till the girl attains the prescribed age of Consent. It has been pointed out that if the girl is under the protection of and resides with the husband, it is difficult to prevent the consummation of marriage before the statutory age and almost impossible to detect a breach of the



law. Moreover, parents who desire to keep the girl with them till that age, are forced to yield to the pressure of husbands or their parents or guardians, accompanied as it sometimes is by threats of legal proceedings, and send the girl to the husband's home.

308. These facts may be accepted; but the real pressure to send the girl to the husband's house comes from the fear that the consequences of a refusal to yield to the request may be disastrous to the future of the girl. Cases are not unknown where a second marriage of the boy has taken place owing to such a refusal. The change in the law of guardianship may afford legal protection to the parents or guardians but will not really safeguard them or the girl in the absence of a law of monogamy. Moreover the change involves so many incidental alterations that we cannot recommend it. Even where the custody of the person of the girl, and not the property, is sought to be retained in the natural guardians after marriage, the husband's rights have to be safeguarded in certain eventualities, such as the kidnapping from lawful guardianship or the seduction of the girl.

309. *Restitution of conjugal rights.*—There are however two classes of cases in which the law may be more certain than it is. A suit for restitution of conjugal rights or the custody of a wife may now lie though the girl is below the age of Consent. We feel certain that, normally, no court of law would grant a decree in favour of the husband in such a case. But it is by no means impossible that the husband may succeed and in any case such a fear sometimes leads to a compromise of such cases. The parent or guardian who is willing to face the threats of an unreasonable husband ought to have his hands strengthened and should not be faced with a proceeding in a court of law. *We therefore recommend that the law be amended so that a suit by a husband for the custody of a wife or for the restitution of conjugal rights shall not lie where the girl is below 15 years.*

310. *Auxiliary recommendations.*—*Women. Police.*—The proposal has been made to enrol women Police to aid in the investigation of offences of Rape, Marital Misbehaviour Indecent Assault and the like. It is urged that it is an ordeal for the girl-complainant in such cases to make her statement to a male Policeman. The duty of taking

down statements from female witnesses and protecting them whenever necessary can be generally better performed by women Police. It is not proposed that women Police should perform the same functions as men Police and such is not the case where women Police are employed. They are detailed to perform special duties such as those mentioned above.

311. Moreover, girl-complainants and women witnesses who attend a court or are taken to a medical officer can at present be entrusted to the care of men Police. It is desirable that they should be looked after by women Police whenever possible. It is obvious that women Police will not be available in sufficient numbers or at all places. In some Provinces it may be more easy to enrol them than in others and in big towns the problem may not present serious difficulties. A beginning has however to be made and they may be enlisted wherever available.

312. Where they are not available, it has been suggested that the presence of respectable and disinterested women of the locality may be secured when the statements of the girl or of women witnesses are taken by the Police. *We accordingly recommend that women Police be employed, where available, to aid in the investigation of sexual offences, in taking statements of girls or women witnesses in cases of Marital Misbehaviour, Rape and the like, and in protecting or accompanying the girls or women witnesses where necessary when going to or from the court house or for medical examination; and that where women Police are not available, any respectable and disinterested women of the locality or neighbourhood be invited to be present, while the statement of the girl concerned or of any female witness is being taken by the Police.*

313. *Medical examination.*—Several witnesses have stated that the existing practice of allowing medical examination of girls in marital and extra-marital cases by male doctors is unsatisfactory and has contributed not a little to the paucity of prosecutions in each of these classes of cases. It is no doubt true that the girl or her guardian may refuse such examination by a male doctor. But this right is little known to the ordinary villager and his ignorance has been adduced by witnesses as the reason for suffering male doctors to examine the girl. It has therefore been strongly urged that it should be an invariable rule that

only lady doctors should conduct such examination. We do not feel that there will be any serious difficulty in carrying out the suggestion. *We recommend that where a medical examination of a girl is necessary it should be carried out only by a woman doctor.*

314. *Separate accommodation in Court Houses.*—It has been brought to our notice that in most court houses there is no separate provision for waiting rooms for women complainants or witnesses. The question of the accommodation of witnesses generally is beyond the scope of our enquiry and we are aware that the matter has been engaging the attention of several local Governments. But we feel that so far as women are concerned the grievance is legitimate and needs immediate attention. *We recommend that separate waiting rooms wherever available be provided for girls and women witnesses in all court houses.*

315. *Time limit for prosecutions.*—It has been suggested by some witnesses that there ought to be a time-limit prescribed for the institution of prosecutions for Marital Misbehaviour. There is generally speaking no limitation at present provided for criminal prosecutions. But the case of Marital Misbehaviour is so peculiar and the consequences are so serious to family harmony that it is considered inadvisable to disturb that harmony after a long interval. The possibility of a criminal prosecution hanging over the head of an erring husband indefinitely for an offence committed many years back, will, it is argued, seriously interfere with domestic happiness. It has therefore been suggested that a period of one year from the date of the commission of the offence may be prescribed as the maximum period within which a complaint for Marital Misbehaviour may be filed. As every repetition of the act below the prescribed age will be a fresh offence it means that such a prosecution cannot be instituted after the girl has completed her sixteenth year. *We recommend that no complaint in regard to an offence of Marital Misbehaviour be entertained after the expiry of one year from the date of the alleged offence.*

316. *Transitory provision.*—The amendment of the Law of Consent in marital cases, raising the age to 15, necessitates the enactment of a transitory provision exempting cases where the girl being above the age of 13 but below the age of 15 the marriage has been already consummated. A

similar provision was enacted at the time of the last amendment of the law. We note that the exemption was extended to all those who were married before the date on which the Act came into operation, provided the girl had attained the age of 12 by that time. The logical course is to extend the exemption only to cases where consummation had already taken place legally. The difficulty of proving that such consummation had not taken place and the certainty that in almost all cases it would be alleged by the accused that it had already taken place, must have influenced the legislature in framing the exemption in the manner it has done. *We recommend that a provision corresponding to section 4 of Act XXIX of 1925 be made exempting from the operation of the proposed amendment, sexual intercourse with a wife between 13 and 15 years of age if the girl-wife was married and had completed 13 before the new Act comes into force.*

317. *Time when the Law should come into force.*—It has been suggested that there should be an interval between the passing of the Act fixing the age of Consent and its coming into force. We have recommended a transitory provision exempting from the operation of the Act persons who are married before the Act is passed, if the girl-wife had attained the age of 13 before that date. We note that in none of the previous legislations was such an interval fixed. We see therefore no reason to suggest a further interval between the passing of the Act and its coming into operation.

### *Law of Marriage.*

318. The foregoing suggestions and recommendations concern the Law of the Age of Consent. We have had various suggestions made regarding the Law of Marriage. The question of the Law of Marriage is not directly before us and though we have recommended the enactment of a law penalising marriages below a certain age, as we consider such legislation essential to the satisfactory working of the Law of Consent, we do not propose to consider detailed suggestions with reference to that law. A few suggestions however regarding the validity of marriages before the prescribed age, the punishment for a violation of the law and the need to take bonds from the husband, parents or guardians to keep the couple apart in such a case, have been dealt with in Chapter IX.

*Suggestions to help the Administration of both Laws.*

319. *Registration of births and deaths.*—The Law of Marriage and the amendment of the Law of Consent, which we have recommended, depend for their successful working to a large extent on the facilities which may exist for the accurate determination of the age of the party concerned. During our enquiry we have given great prominence to the consideration of the question, whether there is an accurate method of recording births and deaths and what defects there exist at present in connection with such records. We have been impressed by the fact that those records are neither accurate nor as complete as may be desired. In rural areas in practically all the Provinces the record of births is admittedly deficient. Even in urban areas though the improvement is noticeable it is still far short of what is requisite.

320. Officers of the department of Public Health in all the Provinces have deplored this fact and have suggested various means to remedy the defect. Census operators and witnesses before us have repeatedly drawn attention to this fact. We are aware that within the last decade an advance has been made particularly in some Provinces where a fairly adequate health staff has been paying special attention to this problem.

321. We feel however that the time has come when steps may be taken to ensure a more accurate registration of births and deaths. In the different Provinces under local Acts various authorities have been entrusted with this duty. The Imperial Act which governs the subject is Act VI of 1886. It seems to us that a greater uniformity of laws in the Provinces together with more rigidity in their enforcement is called for. It has been suggested that in addition to other persons who may be under an obligation to report the birth or death of a child, parents and guardians of the infant should invariably be under an obligation to report such cases within 7 days from the date of the birth of the child. It has been further suggested that every Municipal Council, Taluq Board, District Board, Union Board, Village Panchayat or Notified Area should be under a statutory obligation to maintain an accurate register of births and deaths and required to take stringent steps to enforce registration and to prosecute those who fail to do so. This

power is now conferred on these bodies in some Provinces only.

322. One great defect in the registration of births is the fact that the name of the child is not given. The identification of the child from the birth register becomes very difficult where there are several children born at comparatively short intervals and the date of birth of one child can, either wilfully or through mistake, be confused with that of the next proceeding or succeeding child. The suggestion has been made therefore that the order of birth of the child may be given. Even this, though helpful generally, will often fail in its purpose especially where some of the issues die.

323. A further suggestion of a more helpful character is that the name of the child should be entered. The fact that the name of the child is not given till some weeks or even months after the birth of the child makes this impossible at present. A supplementary report within a specified period will therefore be necessary when the name of the child, if surviving, will be entered in the register. We find that in some municipalities, such as Karachi, the name of the child is given at the time of vaccination and with the help of the vaccination register the birth register is later amplified by the entry of the child's name. *We recommend that in all urban and rural areas the father or other guardian of every child born shall, where not already required by law, report the birth of the child in such form as may be prescribed, within a stated time to a prescribed local authority and make a further report mentioning the name given to the child, if surviving, within a year of the birth, to the same authority. We further recommend that the prescribed authority be required to maintain a register of births within a given area under its control, and to take stringent steps to enforce registration and to prosecute persons who omit to send a report within the prescribed period.*

324. It is essential that these birth and marriage registers should be permanently preserved and that they should not be destroyed after a short period. The proof of age being mainly dependent on these registers, their retention is essential. It is also desirable that certificates of birth should be issued to the parent or guardian when the name of the child is reported and that the members of

the public should be in a position to secure copies of such certificates on payment of a prescribed fee. *We recommend that the registers of births be permanently preserved and that birth certificates giving the date of birth, sex, parentage and name of the child and such other particulars as may be prescribed, be issued free by the prescribed authority to the person making the report, when the name of the child, if alive, is reported to the said authority.*

325. *Registration of Marriages.*—It has been urged by several witnesses that registration of marriages is essential to make the Laws of Marriage and Consent effective. At present there is no provision for the registration of marriages generally. However, among Brahmos, marriages are registered under Act III of 1872. So is the case among Parsis by Act XV of 1865, and Indian Christians by Act XV of 1872. Among Muslims marriages are in some places optionally registered by Kazis and in Behar and Bengal by persons appointed by the Government for the purpose, and the Kazi's register is generally used to corroborate the factum of marriage and to establish the terms of dower; but the registration of marriages is not declared obligatory by law.

326. It has been suggested that registration of marriages be made compulsory in all cases in the same manner as under several local enactments, births and deaths are required to be reported to the prescribed authorities. The registration will only be a record of the fact of marriage and will in no way affect the validity of the marriage. It will be extremely difficult to enforce the Law of Marriage unless the reporting of a marriage to a specified authority is made obligatory. The law must require that every marriage should be duly reported by some person or persons made responsible by law to report, the report to be verified in such manner as may be prescribed, within a specified time to an authority specified by the local Government. In the case of Purdanashin women the report may be sent through an authorized agent. The report should contain the name, parentage, description, address, age, date and place of birth of the parties to a marriage. Such report can be sent by post and need not be personally presented to the authority concerned.

327. In addition to this it has also been suggested that the village Munsiff, Patel, Lambardar or Chowkidar of

every village where a marriage is celebrated shall be under a similar obligation to submit a report, to the authority concerned, of such marriage giving such particulars as may be ascertainable within a prescribed time. The object of these reports is to enable the officer concerned to register the marriages and to find if the law has in any case been violated. Where either on information received or on a comparison of the reports the registrar has reason to believe that an offence has been committed, he may hold a preliminary enquiry and if satisfied, report the case to the nearest magistrate competent to try the case. The suggestion has further been made that the obligation to report such cases may be laid on the registering officer by law where he is satisfied that an offence has been committed.

328. The question what agency should undertake the work of registering marriages has been discussed by several witnesses. We have not however the material before us to make specific recommendations on the subject. It is possible that it may vary in different Provinces and that some existing department of a local Government may be empowered to discharge this duty. The number of marriages celebrated annually is so large and the work involved so heavy, that we do not think it will be useful to suggest any cut and dried scheme for the purpose. There will be the Provincial head, perhaps the Registrar of births, deaths and marriages appointed by each local Government under Act VI of 1886. Under him there will be District and Taluq officers who will be authorised to register such marriages. In some Provinces at least the registration department suggests itself as the most suitable for the purpose. But as already stated, the question of agency and such questions as the person who should be authorised to initiate prosecutions, whether a Sub-registrar or a District Registrar, must be left to a more detailed examination by the Government and the Committee must content itself with putting forward the various suggestions made in this connection.

329. It may be pointed out that the Baroda Marriage Act makes the registration of marriages compulsory and that the extent to which prosecutions of breaches of the law have been successful in that State is due almost entirely to such registration. It is also obvious that the registration of marriages will be of substantial assistance both in pre-



venting and detecting the violation of the Law of Consent. Where the age of marriage is publicly declared, the parties will naturally be careful not to consummate the marriage before the statutory age. Moreover an inspection of the marriage register will considerably strengthen the hands of those individuals or associations which suspect that an offence has been committed and which would welcome an indisputable proof of age before initiating a prosecution. *We recommend that an accurate marriage register in a prescribed form be kept, through an administrative department of Government containing details of marriages including the ages of the couple, and that it be made obligatory by law on parties and guardians of parties to the marriage, either personally or through authorised agents, to report the same to a prescribed local authority.*

*That the officer keeping the register of marriages be empowered and also be charged with the duty to complain of any breach of the marriage law, or any omission to report a marriage or of a false entry in the details required in the registration of marriages, to the nearest magistrate having jurisdiction to try such cases, after such preliminary enquiry as he thinks fit to make.*

*We also recommend that the registers of marriage be permanently retained, and that certificates of marriage be issued to the parties concerned free of cost, when the marriage is reported.*

330. *Publicity of Laws of Marital Misbehaviour and of Marriage.*—In the course of our enquiry we have been struck by the fact that the law relating to the age of Consent in marital cases is unknown to the vast majority of the people. A knowledge of it is confined to urban areas and even there mainly to the members of the legal profession. Nor is this surprising, when the social ideas, habits and customs of the people are considered. In prohibiting marital intercourse where the girl is below a certain age the legislature has penalised the exercise of what is generally considered a legitimate right, and therefore there is an overwhelming need for the administration to bring home to the people a knowledge of the new law that it has promulgated. It is an undoubted legal maxim that ignorance of the law is no excuse. But it is nowhere suggested that there is not a correlative duty on the part of the State to give wide publicity to the law especially in a case like this.

normally public opinion and sentiment alike have not yet come to realise the illegality of the Act. That after nearly forty years of its existence on the statute book, the law is still unknown to most people only emphasises the need for a very wide publicity. The law of the minimum age of Marriage, which we have recommended for enactment, requires equally wide publicity. In fact without a preliminary broadcasting of the law it would be inexpedient to bring it into operation.

331. Nor can the State rest content with a mere publication of these laws. The public have to be educated of the evils that these laws are intended to remove and on the need, in their own interests, for co-operating with the State in eradicating such evils. It is neither proper nor desirable that the State should undertake the task of social reform, but where the health and safety of the public are concerned, it has become increasingly common for the State to educate them by health lectures and similar propaganda. *We therefore recommend that measures be adopted to give wide publicity to the Marriage and Consent Laws and to carry on an educative propaganda.*

332. *Educational propaganda.*—Various suggestions have been made as to how the State can make the law widely known and how the educative propaganda can be carried on by it. The distribution of pamphlets and leaflets on the subject, in the different languages of the country in all rural and urban areas, is a ready means to achieve the object. The publicity campaign carried on by the Government during the war in the various Provinces affords a valuable precedent and the example could be copied with ease and profit. These pamphlets and leaflets could be sent to all village officers and to local bodies for distribution in their respective areas and to various public institutions. They could be exhibited at the public offices and arrangements may be made to broadcast them on the occasions of fairs and festivals and wherever a large gathering of people is anticipated. The services of such newspapers as may undertake the task may also be utilised by the Government for the same purpose.

333. A suggestion may also be made by the local Government to the Municipal Councils, Taluq or District Boards, Union Boards and Village Panchayats, that Vigilance Committees may be appointed by each of the bodies to

carry on a publicity and educative campaign, and the incurring of expenditure up to a prescribed limit by these bodies may be sanctioned by the local Government concerned. The Government may also consider the desirability of subsidizing local bodies and approved non-official organisations which are willing to carry on such work and may help them with such advice or information as may be found necessary from time to time.

334. We desire to draw special attention to the fact that Women's Associations may be utilised for this purpose. The system of Purdah, which exists in some Provinces in an intensive form and in all to a certain extent, precludes the possibility of the ordinary propaganda reaching the women. It is only women that can for a long time to come carry the message of a healthier life to women in Purdah. During the past few years, Women's Organisations have multiplied with great rapidity and if the signs of the times are read aright, it is obvious that the growth will be more rapid in future. Money grants to such societies for specific purposes such as those referred to above, will be one of the best investments to secure healthier homes and a race of citizens endowed with better physique.

335. Lastly the Government may utilise the staff of the Health Department where it is directly under their control and suggest a similar course where the Health staff is under the control of a local body, to carry on an intensive health propaganda and to include in such propaganda an exposition of the evils of early marriage and early consummation. Exhibitions through magic lanterns and cinema films are being undertaken by the Health Officers of some of the Provinces. Travelling rural health propagandists are a feature in the Punjab and Madras and these expedients would be of great use in connection with the subject in question.

336. These are suggestions which have been urged by several witnesses and with most of which the Committee is cordially in agreement. We have not considered it necessary to go into details with reference to them but we should like to emphasise that WE ATTACH GREAT IMPORTANCE TO A PUBLICITY CAMPAIGN AND THAT WE FEEL THAT STATE OUGHT TO UNDERTAKE THE LARGER PART OF SUCH A CAMPAIGN.

337. *General spread of education.*—This leads us naturally to the conclusion that the removal of illiteracy

and ignorance is one of the paramount needs of the country. We do not propose to examine the feasibility of the introduction of a system of free and compulsory education in the country. In every phase of national activity, the enquirer comes repeatedly against the Chinese Wall of illiteracy and ignorance which hampers all progress. Commissions and Committees have repeatedly drawn attention to this fact and it should not be taken as a hackneyed recommendation when we emphasise the need of general education. At every stage of the present enquiry we have been confronted with the difficulty of making real progress owing to the state of ignorance which prevails. We have been struck with the need not merely of free and compulsory elementary education amongst boys and girls but also adults. No lasting and permanent solution can be found for the problem before the Committee except through the removal of illiteracy and ignorance from the land. *We therefore recommend that effective steps be taken to spread general education amongst men and women.*

338. *Alternative suggestions to achieve the object of the proposed laws.—Contraception.*—It remains for us now to examine suggestions which have been put forward as alternative remedies to the Laws of Consent or Marriage for the cure of the evils of early consummation. The primary object of promoting legislation fixing an age for Marriage or raising the age of Consent in marital cases is to minimise the risks of maternal and infantile mortality and to increase the chances of a longer and healthier life to the citizens. Some witnesses have suggested an alternative remedy which in their opinion is better calculated to bring about the same result. The evil, according to them, is not so much early marriage or early consummation as the frequency of births which destroys the vitality of the mother and results in weaklings being born; early consummation in fact is no evil at all and child-birth at an early age is less attended by difficulties and dangers than at more advanced ages. The remedy is to make the married couple realise that the spacing of births should be at longer intervals; and the State or the enlightened section of the public ought to take steps to teach contraceptive methods and the benefits of birth control to young married couples. This view has been urged with great earnestness, and many authorities have been quoted in support, by Mr. Justice Ramesam of the Madras High Court. To a less extent, though with

equal belief in its efficacy, the remedy has been advocated by Sir Mohammad Saadullah of Assam.

339. It may be conceded at the very outset that there is a large element of truth in the theory that frequency of birth has a very direct bearing on maternal and infantile mortality. It is also true that there are several cases where the birth of children has followed at short intervals giving the mothers hardly any chance to recoup their health. But the question remains whether the remedy suggested is practicable in the present state of the country. The idea of contraception or birth control would not be readily accepted by a people whose belief is so very deep-rooted in the dispensations of an inscrutable Providence. The idea that the birth of children can or ought to be artificially controlled would be entirely novel and revolting to Indians, who regard marriage as a means of perpetuating the family and of obtaining that most desirable of God's gifts—a son who according to Hindu beliefs will ensure the spiritual salvation of the father. We find that even in countries said to be most advanced, the new ideas of birth control and contraception are received with great hesitation and are unequivocally condemned by the priestly classes. It will be a long time before they meet with general approval in a country like India.

340. Moreover, birth control is not a subject which can easily be understood or practised by the average citizen. If the technique of the theory of birth control can be imparted, and successfully, to the rural population, we may as well make them realise the evils of early consummation and get them to practise the system of late marriages. It is because witnesses have realised that the advance by education and social reform will be so slow and will take such unreasonably long time that they have advised the Committee to recommend a more expeditious and effective method of achieving the end, namely, legislation. The same objection therefore holds good with reference to reform through the advocacy of birth-control which obviously cannot form the subject of legislation.

341. It may further be pointed out that according to the medical evidence, the effect of frequency of births at short intervals is far more disastrous when maternity starts at an early age than when it starts at a fairly reasonable and safe age. This opinion also confirms us in the view that

whatever other remedies may be needed or applied, early consummation leading to early maternity ought in an event to be prohibited.

342. *Marriage age for boys alone.*—It has been suggested that legislation fixing a minimum age for boys would be sufficient to prevent early marriages and that the age of marriage of girls would in that case automatically rise. This result may no doubt accrue among a few of the educated classes, but not among those who believe that pre-puberty marriages are enjoined by religious injunction nor amongst the vast majority of the rural population who practice the system of early marriage. On the other hand in their case it may produce the evil of greater disparity in the ages of the married couple, an evil complained of in the case of widowers of advanced ages marrying girls of tender ages. In fact the evil of such disproportionate marriages is so great among some communities that we have been earnestly asked to recommend their prohibition by legislation. Such legislation exists in some of the Indian States. But as we are not dealing with the details of marriage legislation we make no recommendations on the subject. On all these grounds the suggestion cannot be accepted.

343. *Miscellaneous suggestions.—Exclusion of married boys from University Examinations.*—The exclusion of boys married below a certain age from University Examinations has been suggested. Some educational authorities are acting on the suggestion and others are likely to follow suit. As we have however recommended a minimum age of Marriage, we do not think it necessary to make any recommendation on this subject.

344. *Prizes to the poor for late marriages.*—Various minor suggestions have been made to prevent the evils of early marriage and early consummation. It has been stated that prizes may be given to those who celebrate marriage after the girl has attained the prescribed age as an incentive to reform and that such encouragement would achieve the purpose without raising any opposition. The suggestion is impracticable in view of the very large number of early marriages and it is extremely doubtful if, even to the poor, the monetary prize can be of such value as to prove attractive enough to bring about the postponement of marriage.

345. *Rewards to complainants.*—Another suggestion is to reward the complainants in cases of successful prosecutions for offences of Marital Misbehaviour. The adoption of the suggestion may result in such spying into the privacy of domestic life that it cannot be conceived with equanimity.

346. There are certain minor suggestions such as empowering certain officials to prevent marriages below a certain age and the exclusion of offenders from Government service which do not deserve specific notice and we have therefore considered it unnecessary to deal with them.

## CHAPTER VIII.

## REASONS FOR ADVANCE.

347. *Age of Consent in other countries—how far a precedent for India.*—The object of a law of Age of Consent is to afford protection to girls of tender age against the strain of early cohabitation and consequent possible early motherhood. The fixing of the age of Consent successively at 10, 12 and 13 marks the stages of advance which the State considered necessary in the interest of the girls of India. Whatever the age of Consent and the minimum age of Marriage may be in other countries, marriages below 16 are very rare in practice, and the majority of marriages take place beyond 16. Three cases of marriage of girls at 13, 28 at 14, and 318 at 15 are reported to have taken place during the last 12 years, in England and Wales. By recent legislation, 16 is now the minimum age of Marriage for both sexes in England and marriages below that age are void. Appendix X-B shows the ages in various countries, and the differences are not explicable on grounds of pure reason or by any necessary connection between physiological considerations and current practice. Neither the ages fixed nor the practice prevalent in other countries as regards the age of Consent or Marriage are necessarily precedents to be followed in this country. Nevertheless, they afford some guidance in considering what the minimum age of Marriage and Consent ought in reason to be. The exigencies of the Indian situation, however, should really form the determining factor in the adoption of remedies to secure such further protection to girls as may be necessary. Whether a law of Age of Consent or a law fixing a minimum age of Marriage is the better remedy, will depend on which of the two will be most effective and suitable to bring about the desired results.

348. We have therefore to find out if there are any circumstances that justify an advance in the age of Consent. The law of the Age of Consent was no doubt originally based on humanitarian considerations regarding the physiological fitness of girls for enduring the strain of early consummation. Circumstances have since changed greatly and various other arguments are now advanced to



justify an increase, though the humanitarian ground still predominates.

349. *Arguments for advance in the age of Consent.*—The arguments in favour of an advance fall under five categories—

- (1) Physiological,
- (2) Eugenic,
- (3) Social,
- (4) Educational, and
- (5) Economic.

They are all correlated and must be considered together. The argument about the safe age for the commencement of motherhood, so that the mother may continue to enjoy married life without detriment to her own health and the health of her progeny, falls under the first two categories. Considerations of conjugal happiness and the various duties to be performed by the wife for the benefit of society fall under the third category. The question of the time and opportunities required to equip a girl for her role in life can be dealt with under the fourth category; and under the last, come prudential reasons for boys and girls qualifying themselves as earning members of society. These arguments have peculiar weight on account of the change in the Indian Woman's outlook on life.

350. *New outlook of Indian Women—a plea for advance.*—During the last few years, a new consciousness has dawned on the women of this country as regards their status and the role they have to perform in life. This is embodied in the central idea of service to their sex and society in the various phases of national activity. So long as women in India were content to confine themselves to home and household duties and so long as they looked upon the husband as the supreme authority, their ambitions were confined to domestic affairs and they were indifferent to acquiring qualifications which would fit them for the service they now desire to render. Women are now members of local Corporations, and Provincial Councils and as education is advancing amongst them, they are gradually entering the learned professions. They are seeking equal opportunities with men, and men on their side are generally responsive to the efforts women are making to raise their status. Women are no longer content to remain

stationary and the change of outlook on their life is a fact of very great significance in considering, among others, the question of advance in the age of marriage. The movement for the emancipation of women largely depends upon this one question, and no wonder the women in this country who came as witnesses before our Committee have with one voice insisted on an advance.

351. *Conflict between views old and new.*—This explains the attitude taken up in their evidence before the Committee by progressive men and women on the one hand and by the conservative group, which is wedded to view about women that have been current so far, on the other. The progressives want to give more opportunities and more latitude to women to enlarge the scope of their activities and would grant them facilities to realize their aspirations. The older group, accustomed to older views and methods, deny the capacity or right of women to advance beyond the routine so far permissible. In this latter group is included a large number of orthodox ladies whose environment has habituated them to the present limitations of their sex. That women should try to set up new ideals is something which passes their comprehension. A parallel is to be found in women's opposition to the Woman's Suffrage movement in England. In Progressive England their ideal was reached after tremendous opposition; here in Conservative India, the chances of women winning their way through, easily and speedily, appear almost certain with the progress of education.

352. *General reasons affecting women's health.*—Large masses of people in India are agriculturists. With the growth of population, agriculture, however, as conducted in India at present, is not sufficiently profitable to give the cultivator and his family enough even for their sustenance, much less for keeping them in comfort or opulence. India is in a state of transition. From a mainly agricultural India is slowly developing into an industrial and manufacturing country. This involves the migration of a large number of men and women to urban areas, with the inevitable concomitants of overcrowding and unhealthy surroundings. This influx into urban areas, though resulting in an increase in wages, leads to serious competition for a living, not only amongst men, but even amongst women. City life is a life of perhaps more amenities, but of certain deterioration in the health of the immigrants. The women

of the higher classes of society have far less physical work than women 50 years ago. The standard of life has gone up during the interval and they have less domestic work involving physical exertion and hardly any substitute such as out-door exercise. The women living in villages have more exercise and free air, but their economic condition is not very favourable to physical development and their nourishment is poor. The women in villages and cities possess much less vitality than their female ancestors. Every succeeding generation of men and women in India realises that it is weaker than the preceding generation. The need to conserve the physique of women is thus much greater to-day, than ever it was before. Woman is always the weaker vessel compared with man and she has suffered more than man in the stress of competition, a circumstance which has led to a gradual deterioration of health in both sexes.

353. *Physiological and Eugenic considerations.*—The following three questions are closely connected with the physiological and eugenic considerations and we propose to deal with them here together:—

1. Is the onset of puberty, as indicated by the beginning of menstruation, sufficient to justify cohabitation?
2. Is cohabitation by itself, without pregnancy, detrimental to health or fertility?
3. Are there any evil effects resulting merely from early maternity, *i.e.*, before 16 years (*a*) on the mother's health, and (*b*) on the infant's health?

354. *Age of puberty.*—One of the inquiries in our questionnaire was, 'What is the usual age of puberty in your part of the country?' Out of 867 replies to this question, 53·4 per cent. state that the age of puberty is 12-13 or 14 years. In Lyon's Medical Jurisprudence the age is said to be between 12-14 years in 65·7 per cent. of Indian girls. The figures given in Appendix VIII confirm the same view. It may therefore be reasonably concluded that the difference in the usual age of onset of menstruation between Indian and European girls is approximately one year; Blair Bell writing of English girls says "The usual age of puberty is about the end of the 14th year but the appearance of it between the 10th and 16th years cannot strictly be considered abnormal;" and Fairbairn says "The age at which puberty is reached is from 13 to 16 years, but may be as early

as 10 or delayed to 19-20." He continues " Conditions producing early sexual stimulation tend to produce precocious puberty." Blair Bell says " Heredity, health, feeding and environment all play an important part. In view of the fact that the eminent English gynaecologists quoted above hold that early sexual excitement tends to produce precocious puberty, it is significant that witnesses from Bengal and Madras state that in classes amongst whom early marriage prevails, puberty may even begin at 8, 10 or 11 years.

355. Some of the orthodox witnesses tell us that there is definite risk to the morality of a girl when puberty is attained if she is not married immediately. As has already been pointed out, the apprehension regarding morality is not well founded. Further, they apparently do not realise that their advocacy of early marriage proceeds round a vicious circle—early marriage being in fact responsible for precocious puberty. One of the psychological effects of early marriage is worthy of note. Owing to the frequent talk of marriage of girls at an early age, their mentality is stimulated on the subject, with the result that onset of puberty is hastened. The evidence tendered to the Committee by many women witnesses shows that women have realised the evil of early sexual stimulation and the necessity for postponing marriages and providing occupation for the mind of the adolescent girl.

356. *Is onset of puberty sufficient to justify cohabitation?*—Menstruation is not a sign of bodily maturity. It is in most cases merely a sign of puberty and ovulation, with possible pregnability or capacity to conceive. It is not an indication of fitness for conception; and that the old Ayurvedic physicians realised this, is shown by the fact that Sushrut and Vagbhat categorically state that impregnation should not take place before a girl has attained 16 years, if healthy offspring is desired. What man would expect a boy of 14 to do a full day's hard labour simply because his voice has cracked? And yet, cracking of the voice is one of the indications in boys of the onset of puberty. Why should women, the weaker sex, be exposed at a tender age to the strain, not of one day's hard labour from which one might rest the next day, but to the nine months' strain of the growth of a foreign body inside them followed by the intense exertion of labour, which even in the easiest case throws a great strain on the heart and kidneys?

357. *Is cohabitation by itself detrimental?*—We have now to consider the question whether, cohabitation by itself without pregnancy is or is not detrimental to health. Some witnesses have stated that the actual sexual act does no harm to the young girl and support their contention by pointing out how rarely local injuries are brought to light, and it is the opinion of the majority of medical women that serious injury is very seldom met with in marital cases. It has to be remembered, however, that when injuries do occur, unless they are extremely serious, they are not likely to be taken to a doctor. On the other hand there has been abundant evidence that local injuries do occur in marital cases. Apart from cases of local injury, the evidence shows further that in many cases there is a shock to the nervous system, the effects of which are felt throughout life, often leading to pronounced general debility. At the same time, consummation by itself often has a detrimental effect on the health, for if she does not conceive within a couple of years of marriage, she sometimes tends to become hysterical and low spirited.

358. *Are there any evil results from maternity before 16?*—The medical evidence as to the age for safe motherhood is almost unanimous. An overwhelming majority of medical practitioners, both Western and Ayurvedic, considers that 16 years complete is an age safe for maternity without detriment to the health of mother or child, though many think that 18 years complete would be preferable. The recent All-India Conference of medical men, held at Calcutta in December 1928, resolved that in the interests of the child and the health of the mother, union between men under 20 years of age and women under 16 years of age is undesirable on scientific grounds. Complete statistics from all over India are not available, but wherever it was possible to get reliable figures they were obtained, and in most cases these figures prove, very strikingly, that early maternity, *i.e.*, below 16 years complete, has a markedly deleterious effect on mother and child. Figures have been obtained from 4 sources.

I. *From King Edward Memorial Hospital, Poona.\**—In this hospital, out of a total of 1,650 cases of pregnancy below 30 years of age in 3 years, 6.26 per cent. were below

\* Statistics of this hospital and sources Nos. 2 and 4 are not given in the report as they would be too bulky for an Appendix. They are however available with the Government.

16 years complete. Of those who became pregnant at this early age, 31 per cent. had abortions or premature labour 17·8 per cent. showed some abnormality such as death of foetus, prolonged illness of mother after confinement, perineal tear, etc., making a total of 48·8 per cent. of abnormality.

II. *From the Lucknow Branch of the Lady Chelmsford Maternity and Red Cross Society Child Welfare League.*—In this branch the total number of cases of pregnancy below 30 years was 3,160 in 3 years. Out of these 2·3 per cent. were below 16 years complete, of whom 35·75 per cent. show some abnormality as above described; whereas for the age period 16-19 the abnormality rate was 17·52 per cent. and for the age period 20-30 it was 10·50 per cent. These patients were, for the most part, confined in their own homes and therefore more closely represent the average population than do hospital patients. However, these cases were favourably circumstanced as they had the benefit of ante-natal care, and yet 35·75 per cent. of pregnancies in young mothers show abnormality.

*Still births and neo-natal deaths.*—An analysis of these figures to discover whether any difference can be detected among the infants of mothers under 16 and over 16, brings to light the interesting fact that in mothers under 16, the percentage of still births and neo-natal deaths, *i.e.*, deaths within the first 8 days after birth, is 14·8. In mothers between 16-20, the percentage is 9, and in mothers between 20-30 the percentage is only 4·3. This means that there are nearly  $3\frac{1}{2}$  times as many still births and neo-natal deaths in the case of girls below 16 as there are in the case of women between 20-30.

III. *Maternal mortality.*—An elaborate field study of the maternal mortality rate and the various factors associated therewith was carried on by Dr. Adiseshan, the Assistant Director of Public Health, Madras, and the histories of over 7,000 confinement cases registered in Madras, Madura, Trichinopoly and Coimbatore during the period October 1927 to September 1928, were examined by him (Appendix VI-A). These confinements corresponded approximately, according to him, to a population of 183,000 and comprised very largely Hindus belonging preponderatingly to the urban areas. The more important and rele-

want conclusions formulated after a careful analysis of those histories were as follows :—

- (1) The maternal death rate in confinements investigated is 17·89 per 1,000 births, which compares very unfavourably with corresponding figures in most other countries (In Europe it varies from 2·35 to 6·64 per 1,000).
- (2) The maternal mortality is at its maximum in the earliest ages. In relation to the order of confinement, the maternal mortality rate is highest in the 1st confinement. Also in the 1st birth order, the earlier the age of the mother, the greater is the risk of maternal death. As regards the later birth orders, age does not appear to have any appreciable influence on mortality.
- (3) Economic conditions do not seem to have any relation to maternal mortality, but seem to have an inverse relationship to neo-natal mortality (*i.e.*, of infants within first 8 or 10 days).
- (4) The incidence of neo-natal mortality is greatest in the 1st birth order when the mother is under 20 years age.

Dr. Adishesan rightly observes in his written statement “ It should be remembered that proportionate to this high maternal and child mortality, there is a vast number of invalids or physical wrecks among the survivals, the significance of which should not be lost sight of on account of their being a burden to the individual families and to the community in general ”

The conclusions arrived at from the present analysis seem to warrant the inference that the consummation of girls under 15 years of age is unfavourable both to themselves and to their progeny.

IV. *Weak progeny.*—*From the Child Welfare League, Nagpur.*—Out of 1,100 consecutive labour cases in three years, 134 cases were below 16 years complete, and of these it is noted in 19·4 per cent. that the child is still born, or weak, or died within the first week. Where the child is noted as “ Weak ” it usually means, according to Mrs. Tarr, Secretary of the Child Welfare League at Nagpur, that it is very unlikely to survive. These figures are not

so useful as the others, as we were unable to obtain figures of other age periods for comparison. If over 19 per cent. are thus "Weak" in a place where proper care is taken of the expectant mother, it can readily be understood that where such care is not taken, the percentage of dead or weakly children must be much greater.

359. *Infantile mortality*.—The Health Officer, Delhi Municipality, states that the death rate of children is abnormally high. In 1926 infant mortality per 1,000 births in England was 70 per mille and in India 189·04 per mille (*vide* Appendix VII-A). The actual infant mortality rate in Delhi itself from 1919-1927 inclusive shows that among Hindus there were 272·46 deaths per mille, and among Muslims there were 180·17 deaths per mille. The Health Officer states that the causes of this very high infant mortality are :—

1. Early marriages.
2. Early child bearing age.

A death rate of 189·04 per mille may not appear to be very great but when we work out the actual figures for one Province on the basis of 189·04 per mille, we begin to realise the appalling sacrifice of infant life. For instance, in the United Provinces in 1925 there were 1,485,275 births; this means that there were 280,776 deaths under one year in one Province alone. This is exclusive of still births which would add some thousands to the above figure, making an enormous total loss of infant life under one year. Wherever there is a very high infant death rate, a great number of children, male and female, who do survive are likely to be weaklings and if such girls are to be further handicapped by early marriage before their own weak bodies have properly developed, what must be the inevitable effect on succeeding generations?

360. Some witnesses state that various causes conspire to bring about the evil results of high maternal and infantile mortality. No one will deny that poverty, ignorance, tuberculosis, bad midwifery conditions and insanitation all contribute to the appalling maternal and infantile mortality of India. But these factors are operative at all ages. If the abnormality rate is twice as much at the early age periods as it is between 20-30 years (infantile and maternal mortality and health suffering) it is surely legitimate to infer that maternity at such early age is in itself especially harmful.



361. *High maternal mortality under* witnesses tell us that infantile mortality is not in places where early marriage is most largely. Mr. Charu Chandra Mitra of Calcutta who at this point has taken figures of girls married before 10 only; this is misleading, as girls married up to 15 must be taken into account. In this connection it is to be remembered that marriage as such, not immediately followed by consummation, cannot be correlated to deaths of mothers and infants. In many cases there is a considerable interval between marriage and consummation, perhaps a longer one between marriage and impregnation. The evil effects are largely due to early cohabitation and impregnation before 16 complete and in a small degree to marriage alone. The relevant factor in this connection, therefore, is not the marriage ceremony but the age of cohabitation or impregnation. From tables 7 and 8 of Dr. Adiseshan's paper (Appendix VI-A), it will appear that the maternal mortality is highest below 15 years and is in fact double the rate of deaths between the ages 15 to 19. Table 8 is particularly interesting as it shows that in the United States of America also, maternal death rate under 15 is three times as much as the death rate of women between 15 and 19.

362. *Relation between early marriage and maternal and infantile mortality.*—From the figures of 1921 Census quoted in Appendices VI-C and VII-C, in some Provinces of India it appears that where more girls under 15 are married, greater infant and mother mortality exists though not in the same proportion as the number of girls married. In other Provinces, this sequence of cause and effect however does not hold good while in Burma where hardly a girl is married below 15, above 200 infants die per 1,000 births. From these figures by themselves no conclusion can be drawn as to whether there is any necessary connection between child marriages and infant or maternal mortality as cause and effect. If figures for mother's deaths at the ages 15-16-17 were available it would have been possible to arrive at some definite conclusion on this point.

363. *Excess of female deaths over male deaths during child bearing age.*—A point which was brought out very strongly by the Municipal Officers of Health in several towns visited during the tour is the marked increase of

female deaths over male deaths at age periods 10-15, 15-20 and 20-30, the general child bearing age of women. After 30 years, the male deaths begin to predominate. Dr. Adiseshan's figures in table 2 of Appendix VI-A confirm the same view. Explanations offered by the Medical Officers for this marked increase in the number of female deaths were the evils of early marriage, the Purdah system which render women more susceptible to tuberculosis, and bad hygiene, during maternity. The first reason is supported by observations of Census Officers of Bengal, Madras and the United Provinces.

364. While speaking of *sex proportions in death* for the decade 1911-20 the Census Officer, Bengal, says (page 255, Part I, Vol. V, Census of India, 1921), "We may take it that on the average through the decade the proportion of females to males in the population was 943 per mille. The proportion of female to male deaths appears to be very well below this figure throughout life except at two points. It touches it in early childhood between the ages 1 and 5, and it passes very far above it between the ages of 15 and 30. The contrast between the high proportions of deaths of females per 1,000 deaths of males between 15 and 30 and the low proportions both in childhood and later maturity is very remarkable indeed. The proportion is, it will be notified, higher although not much higher, between 15 and 20 than between 20 and 30 and the same was the case before 1910. It would appear then that there is a phenomenal excess of female mortality in Bengal during the first part of a woman's reproductive age-period. In England the proportion of female to male deaths is higher at the beginning of the same period than it is later, but it is still strongly in favour of females. Whereas in Bengal, the females' chance of living from 10 and 15 was better than the males in the proportion of 4 to 3, the proportion is reversed in respect of the chance of living from 15 to 20. This result is brought about mainly by the difficulties of child-birth under the conditions which are in use in this country, and to the after effects of child-birth upon the woman's health. Deaths in child-birth are perhaps not remarkably numerous, but the number of women who suffer from disorders which are traceable to the time of the birth of their children is enormous. Much has been said and written of the evils of infant marriage, resulting in the survival of child-widows condemned to a life of

austerity and very often of drudgery and so on, but to the critic of these statistics the evil which does far more harm to the women of this country is the custom that ordains, that a woman must not only be married but live the life of a married woman immediately she attains puberty. It is not suggested that the women themselves are not partly responsible for the existing popular feelings in the matter. That scandalous tongues are at work at once on any instance in which the common practice is not followed is indeed proof of that is so. It may be said that the custom of deferred marriages which prevails in Europe is the artificial, and the Indian custom the natural one, but there seems no doubt which is the less harmful to the health of the female population ”.

365. The remarks of the Census Officer, United Provinces in this connection appear (page 192, Part I, Vol. XV, Census of India, 1911) as under :—“ As regards Hindus, it has already been said that though there cannot be much, there is probably some, understatement of the age of unmarried girls of 10 to 15. The figures seem also to point to a certain amount of overstatement resulting in an increase at 30. But the chief reason for the more unfavourable figures of Hindus lies in their earlier marriage age. Puberty is a time that always has its risks even in Europe; but when to the functional derangements which it causes are added the risks attendant on parturition at a very early age and the less immediately fatal, but just as serious, dangers of premature sexual relations, it is not surprising that the age-periods 10 to 15 and 15 to 20 should have high death-rates. It is observable in the vital statistics chiefly at 15 to 20, simply because the chaukidar is no more accurate in his age returns than the enumerator is, possibly even less so, and consequently the girl mothers of 13 and 14 who die will be returned as 15. The ratio of deaths of females to 1,000 male deaths for the decade at 15 to 20 was 1,081. During the decennium 1891 to 1900 they varied between 1,008 and 1,176 per 1,000 males. This loss falls far more on Hindus than Muslims simply because the Muslim marriage age is considerably later.”

366. The Madras Census Officer has followed up the age periods of 0-5 and 10-15 in successive censuses and makes the following observation (page 69, Part 1, Vol. XIII, Census of India, 1921).

“ From the following statement it is possible to follow through succeeding censuses the fortunes of persons placed in various age groups in 1891. The figures relate only to persons enumerated in British territory.

		0-5		10-15	
	Males.	Females.	Males.	Females.	
1921	2,547,664	2,659,423	2,605,202	2,438,224	
1911	2,716,605	2,820,372	2,488,739	2,295,029	
1901	2,521,995	2,651,248	2,419,697	2,209,587	
1891	2,591,549	2,726,418	1,895,566	1,651,286	

Persons aged 0-5 in 1891 had by 1901, when they appeared in group 10-15, lost about 141,000 males and 517,000 females; this greater loss of females at this age-period occurs at each successive census though not in such a marked degree: between 1901 and 1911 the loss was 33,256 males and 356,219 females, and between 1911 and 1921 it was 111,403 males and 382,148 females. The reason for the greater mortality of females at these ages is no doubt premature marriage and maternity.”

### 367. *Illness, sterility and general debility of mothers.*—

So far we have not considered individual evidence, but reference to the printed oral evidence in the several volumes of the evidence will show how in every town several witnesses, both lay and medical, bore eloquent testimony to the sufferings of young girls in confinement. The witnesses speak of many deaths, abnormal deliveries, prolonged illness of mothers after confinement, sterility in some cases and prolonged debility or chronic invalidism in many others. We would here especially refer to the evidence amongst many others, of Dr. Campbell, Principal of the Lady Hardinge Medical College, Delhi, who has found that these young mothers are usually unable to nurse their infants; either they have not sufficient milk, or they suckle at the expense of their own health and growth.

### 368. *Early cohabitation and early maternity harmful.*—

In the foregoing paragraphs we have clearly demonstrated that cohabitation and maternity at early ages are definitely harmful. There can be no doubt that, now that India is soon to take her rightful place in the comity of nations, it is all the more necessary that she should put her domestic affairs in order; the offsprings of weaklings are generally physically degenerate and incapable of sustained physical or mental exertion.

369. *Social and Educational reasons—Knowledge of married life and its responsibilities absent in early marriage.*—There are other considerations besides those of health why an advance in age is necessary. In the first place, a girl should be of an age before marriage to understand the nature of married life and its responsibilities. That most parents of girls in India in settling the marriages of their children generally look to the best interests of the children may be safely asserted. It does not follow, however, that the best interests of the children concerned are necessarily subserved. With persons in different stages of civilization, with varying mentalities and different communal customs, it is not difficult to find cases which are an exception to the above rule. Examples are not wanting in which the preponderating reason which tilts the balance in favour of a husband is his wealth. Purely eugenic considerations do not regulate marriages even in other countries and the day is far distant when India will be one of the nations in the world accepting the eugenic as the preponderant consideration in match-making. There is no question of mutual love before marriage as an element in settling marriages in India. Love develops later when the couple live in a family and eventually meet each other. As examples of exceptional cases noted above, the evidence before us has proved cases in which parents of all castes, and communities give girls in marriage for money payments irrespective of the girl's age or any other considerations of aptitude of the husband. There are others who give daughters of tender age to widowers of advanced age in utter disregard of the physical consequences to the girl. While a price is often paid to secure girls, there are cases where dowries are exacted by the husband's people, and the transactions are swayed by considerations other than the genuine well being of the couple to be united in marriage. Girls are sometimes exchanged between two families to avoid cost and in that case even the disparity in the ages of the girls and boys is not considered. Such cases justify the deferring of marriage till girls come to such an age as to have some ideas about marriage.

370. *Early marriage and early consummation curtail freedom and joy of girlhood.*—When a girl is married as early as at present, she hardly enjoys the freedom and joy of girlhood and before she knows where she is, she is compelled to be a mother. Whether women follow the profes-

sions which men follow at present or not, it is necessary that every girl that looks forward to lead a married life must have a minimum knowledge for the proper fulfilment of even the limited functions of wife, mother and keeper of her home. She must have enough knowledge to conduct a home and to bring forth and rear up children and even educate them to some extent. She may have preferably more knowledge about her duties to society, but in any case she must have this minimum. A certain period is necessary for the purpose and 16 years of the life of an ordinary girl would be fully taken up to acquire this minimum knowledge.

371. *Disintegration of Joint Family system necessitating higher age.*—The Joint Family system amongst Hindus is gradually disintegrating and even among Muslims the way of living is becoming more and more individualistic on account of circumstances; restrictions once observed in sex relations between husband and wife are therefore disappearing. However much some people may bemoan its loss, the Joint Family is not going to be a feature of Indian society much longer. In house management and in the rearing of children, the girl-wife, under the new conditions, will have no help from elderly ladies as she once had in Joint Families. She will have to do all her domestic work, tend children and otherwise conduct her home all by herself. This necessitates previous preparation and an amount of knowledge adequate to deal with the situation. Moreover the modern educated young man prefers a wife who can give him adequate companionship. Ideas, ideals and sentiments always want and find satisfaction and pleasure in response. Harmony and companionship are possible only among those who can respond to each other. An educated wife is likely to be more responsive to the ideas or sentiments of her educated husband. In order that girls may lead a life of domestic felicity, it is necessary now that they should be educated. All this means that it is essential that a certain period of time must elapse before she can prepare herself for the duties of a home. For girls who aspire to anything beyond the ordinary routine of family life, a much longer period is necessary.

372. *Evil of early widowhood.*—There is also the question of avoiding widowhood under a given age. Amongst the higher classes, widow remarriage, though now validated

by Statute, is looked upon with disfavour by society and whatever glowing description may be given of a Hindu widow's life by some witnesses, it is certain that no male would or could endure a corresponding ascetic position. If marriage is deferred to a given age, so many girls below that age will be automatically saved the terrible ordeal of early widowhood. Even where widow marriage is permissible, widowhood is a calamity. The doctrine of widowhood being a result of sins in past life brings no solace to the child-widow, and the calamity had rather be avoided by deferring marriage than be mitigated by a fresh marriage.

373. *Economic reasons—Unwillingness of young men to marry without economic independence.*—There is a tendency amongst the educated classes for the marriage age of boys to rise, as young men are unwilling to marry before they feel they can be economically independent. The age of girls does not rise to a corresponding extent in many cases where pre-puberty ideas prevail; in such cases an increase in the age of girls by law would be desirable. This may also help to mitigate the evil of large money payments to bridegrooms, where these must be paid because of the dread of the girl attaining puberty before marriage. This evil is not general but is confined to certain classes in certain Provinces.

374. *Necessity of girl's capacity to earn before marriage.*—From the woman's point of view also, the present position of an Indian woman is one of dependence on the man for the upkeep of the home. A capacity for earning must exist in a woman to ensure to her a more vivid recognition by the husband of the value of woman's share in conducting a home. This view also makes it necessary that a girl must have acquired before marriage a capacity to earn and indicates a higher age for marriage before she undertakes the responsibility of keeping a home.

## CHAPTER IX.

## CHOICE OF REMEDIES.

375. *Favourable circumstances for advance by legislation.*—Social legislation may be undertaken when demanded by public opinion or, in exceptional circumstances, it may be even ahead of public opinion. From whichever point of view the question of legislation as regards Marriage and Consent be looked at, the present enquiry shows that there are circumstances which would justify such legislation. The law against Sati may be said to have been ahead of public opinion and the demand for other social legislative enactments was confined only to a few. A large proportion of the people already follow the system of post-puberty marriages. (*Vide* paragraphs 219-222.) Even amongst the communities practising early marriage, there is a clear demand for legislation by a large majority of the advanced section, some of whom have proved their faith in the reform contemplated by actually resorting to post-puberty marriages and late consummations, after considerable propaganda in favour of an advance in age. The educated women have almost unanimously declared for an advance in the age of Consent to and for a Law of Marriage at 16 at least, and the more conservative ladies are deterred by environments from an expression of opinion or are content to keep the *status quo*. Even orthodoxy, so strong in its old moorings, is wondering if after all some sort of change would not be in its interests. Opposition to an advance was incomparably greater in 1891 than it is now. A consciousness of the magnitude of the evil has impressed itself on a considerable number of men and women who yet find it difficult to break away from old established usages. Even in Madras and Bengal, where orthodox opinion is comparatively strong, many orthodox witnesses, though opposed to a change, are prepared to go up to the age of 10, 12 or even 13 for a Law of Marriage, and a higher age for Consent. Economic and other reasons already at work are tending in many cases to increase the age limit. Education by itself may not be an effective weapon in eliminating the evil of early maternity. The Brahmins in Madras, who are one of the most intelligent



communities in this country, are highly educated and yet a large number of them is opposed to a change; education has not altered their angle of vision in this direction to the extent desired. Most people get into a groove in social matters, and constant familiarity with established customs, however harmful they may be, blunts the edge of feeling. Some outside pressure like legislation is needed for removing the evil and for making the Indian communities, proverbially so slow to change in such matters, accept later marriage and maternity. A new law, if enacted, will not only consolidate the gains in the rise of age made by voluntary and conscious effort, but will prevent the tendency of the lower classes to backslide by imitating the higher castes. There is evidence in some Provinces that castes and communities, which were accustomed to post-puberty marriages, are now resorting to early marriages in imitation of the customs of superior castes. It will fortify a great many orthodox men and women who are afraid of social obloquy and fear of social degradation, consequent on late marriage and late consummation. There is thus ample justification for legislation as a potent and speedy remedial measure, to ensure reasonably late maternity.

376. *Age of Consent or Law of Marriage.*—The law of the Age of Consent has been mostly ineffective. That the law at 13 is broken is positively asserted by a larger number of witnesses who are equally positive that these cases seldom come to court. The small number of cases that reach the courts have come only when there is some shocking injury to the girl. There is also a possibility of such cases coming to light, if there is a motive behind the complaint. We accept that the main reason given for such cases not coming to court is correct. The families of the girl and the husband do not want a delicate matter of family life to come to court and create a scandal. Generally the husband and wife and their near relations alone have the knowledge of the facts necessary to prove a breach of the law, and yet they are the persons most interested in withholding that knowledge from the court and thus saving the offenders from punishment. The other reasons given are that consummation is a secret act, and the offence being non-cognizable, the Police cannot interfere, and nobody else has the interest or knowledge to make a complaint or to prove the offence. Social opinion does not look



ing cases of breach, the interference with married life will cause far more irritation and rouse far more resentment than a law prohibiting marriages below a certain age. The Law of Marriage may antagonize the orthodox at the beginning but they will prefer it to the far more serious risk of perpetual annoyance caused by a rigorous enforcement of the Law of Consent. To obviate the annoyance, some witnesses have gone the length of suggesting that marriages below a certain age may be declared void but we consider that such a proposal would be far more unacceptable to the people. We have therefore definitely come to the conclusion that the best method of preventing early consummation or of deferring it to an age considered safe for motherhood is to penalise marriages below a certain age.

380. *Why the orthodox object more to Law of Marriage and less to Law of Consent.*—As stated in Chapter III of our Report, the Law of the Age of Consent even at 13 has not been effective. In 1891 there was much stronger opposition when the age of Consent was raised in marital cases to 12 than in 1925 when it was raised to 13, but by neither of the enactments were the practices of the people seriously affected. The cases below 12 or 13 within marriage, being non-cognisable, have been least liable to detection. The even tenor of family life, which permitted the practice of union soon after puberty irrespectively of the girls' age, was never in fact disturbed, and the law of 12 and 13 was therefore endured. If unmarried girls attained puberty before 13, the fact could well be concealed. If however the age were to be raised to 14, 15 or 16, there would be a much larger proportion of girls attaining puberty before those ages and it would be difficult to conceal puberty so long or to postpone consummation for that period. The higher the age, the greater is this difficulty and the greater are the chances of detection of the offence, as maternity might possibly result from the union in a larger number of cases than at present and evidence of the offence might thus be demonstrably available. Notwithstanding these "risks," the pre-puberty classes are more in dread of a law fixing the minimum age of Marriage than of a mere rise in age of Consent. In the latter alternative with a rise to 14, the chances of visible proof afforded by maternity are not materially increased and

orthodoxy would be only too glad, in the last resort, to have a rise only up to 14. The chances of detection are not increased and all the reasons for the law not being effective at present will continue to exist. But the same security is of course not felt in a rise to 15 or 16. As regards the Law of Marriage, apart from the fact that puberty could be ill concealed even till 14 complete—and that is the minimum marriage age suggested—the orthodox feel that they must disregard Shastric injunctions and go against established custom. There is thus a very strong incentive to oppose the Law of Marriage and endure, if the worst comes, a rise merely in the age of Consent as the lesser of the two evils. The intensity of feeling of the classes concerned may be conceded, but in estimating the value of their preference for an Age of Consent Law we must consider the comparative efficacy of the two kinds of legislation to secure the object in view.

381. *Lower Marriage age with higher age of Consent.*—We were anxious to find out a *via media* by which we could least wound the susceptibilities of the orthodox Hindus who consider pre-puberty marriage essential. We were willing to adopt a method, if possible, whereby pre-puberty marriages would still be permissible and yet consummation and maternity would be effectively deferred till 15 or 16. Suggestions have been made by witnesses that if a law was to be enacted at all, a law penalizing marriages below 12 along with a higher age of Consent, such as 14 or even 15, would be tolerated even in Madras. We do not doubt the sincerity of those who believe in the efficacy of the Law of Age of Consent at 14 or 15 to prevent consummation before that age. There is however overwhelming evidence to show that the Law of Consent by itself is not likely to be much more effective with any age limit, and that consummations would go on almost as before without detection. WITHOUT A MARRIAGE LAW, FIXING AN AGE CLOSELY RELATED TO THE AGE OF CONSENT, THE LAW OF CONSENT WOULD NOT BE OF MUCH AVAIL. We are therefore not prepared to accept the suggestion.

382. *Puberty the age of Consent.*—Another suggestion has been made that puberty may be declared to be the age of Consent. This seems to be based on the assumption that as soon as puberty occurs, cohabitation is permissible. The detection of pre-puberty consummation is, as we have

found, well nigh impossible and as such cases are by no means inconsiderable, the evil is bound to continue if the age of Consent is put at puberty. Moreover, we are not prepared to accept the statement that the first onset of menstruation is a certain index of fitness for consummation or safe motherhood. The age of puberty varies in different communities and where it occurs at 10, 11 or 12 we think that girls will be too immature for cohabitation at that age. We have no hesitation therefore in rejecting the suggestion.

383. *Penalising Gaona or consummation before a certain age.*—The suggestion has also been made that there should be liberty to go through the ceremonial of marriage at any age of the girl but that "Gaona" or the consummation ceremony before an age prescribed by legislation should alone be penalised. If a law prohibiting "Gaona" before a certain age were in force, a breach of that law can be punished only once and the law will not prevent marital intercourse and thus the object in view may be defeated. Then again the practice of "Gaona", "Garbhadhana" or similar consummation ceremonies does not obtain throughout India and wherever it existed once it is fast dying out. The enforcement by means of penal law of the performance of such a ceremony is unthinkable and the ceremonial, if and where voluntarily done, is liable to be omitted altogether at the discretion of the couple or their guardians. Moreover, even where the consummation ceremony takes place, most of the guests invited have no means of ascertaining the ages of the couple, and detection of a breach of the law penalizing Gaona before a prescribed age would be well nigh impossible. The publicity at marriage ceremonials and the opportunities to ascertain the age of the girl would hardly exist at the time of Gaona. We therefore reject this suggestion.

384. *Minimum age for Marriage.*—In order to be able to recommend the statutory age, below which marriage should be penalized or to which the age of Consent should be raised, we have to weigh the several opinions on the age limits. The views of persons like Sir Tej Bahadur Sapru of the United Provinces on the one hand, and of Mr. T. R. Ramchandra Iyer of Madras on the other merely represent the high water mark of extreme opinion on either side. One would have us go to the logical limit of 18 at once and

the other would not have us move at all. The women and witnesses of advanced views have uniformly suggested 16, if not more, and the more conservative witnesses have suggested 10 to 12 for Marriage and 14 or 15 for the age of Consent. It was also suggested that we should straightway go to 16 as the minimum for Marriage as the dissatisfaction amongst the more conservative people will be just the same at 14 or 16, both being post-puberty ages. We, however, fully realise the difficulties and the intensity of feeling of the latter class and think that the least age we can recommend as a definite step towards the ideal of 16 cannot be less than full 14 years. We expect that some time will be taken in arranging matches after 14 and some further period may elapse before actual consummation takes place. Maternity will thus be nearer 16, *viz.*, the safe age according to medical opinion. Like all compromises the age limit of 14 may not satisfy either of the parties. We feel however that once 14, the age of puberty, is passed, the Rubicon will be crossed and the limit of 16 automatically reached, so as to render legislation for further advance unnecessary. The modern girl has less vitality than the girl of the Ayurvedic period and the age should therefore have gone above rather than below 16 if the principle enunciated by Sushruta and Vagbhat. were to be followed. If a law at 14 for Marriage is enacted, those who are compelled by custom to perform pre-puberty marriages will be helped to break through that custom and the oppressive weight of the custom demanding the sacrifice of pre-puberty girls at the altar of Hindu marriage will be lifted off their heads. It is in this hope that we recommend 14 complete as the age before which marriages should be penalized. A period of 4 years beyond the wife's age would indicate a suitable minimum age for the marriage of boys. Accordingly, we recommend *that in order to deal most effectively with the evil of early marriage and early consummation a law be enacted fixing the minimum age of marriage of girls at 14 years.*

385. *Muslim opinion.*—The spirit of Islamic law is to let women have a voice in the choice of a husband. Minor girls given in marriage by guardians, other than the father or grandfather, have the option of repudiating the marriage on attaining puberty; and even in the case of a marriage effected by the father or grandfather, a Muslim

girl on attaining discretion can repudiate it for certain definite reasons by which her interests are adversely affected. The new Marriage Law, fixing the marriage age at no less than 14 and thus giving her a better opportunity to make a choice, would be in consonance with the spirit of Islamic Law. The enactment of Marriage Law will thus only be a case of fettering the liberty to marry at any age which now exists and not a breach of any religious injunction. We cannot recommend the exemption of the Muslims or any other community from the operation of the new enactment and the law should be one of general application to all communities in India.

386. *Should the law apply to Muslims only after agreement by local Legislatures.*—It has been suggested that the Law of Marriage should not be made applicable to Muslims unless in any Province, the Muslim members of the local Legislative Council by a three-fourths majority agree by a resolution that the Act should be extended to the Muslims of that Province. We are unable to agree to this suggestion as it will create innumerable difficulties in the working of the Act. We fail to see how the members of the Assembly representing the various Provinces are less fitted to decide a question affecting the whole of India. Nor are there any special grounds based on religion which are applicable to particular Provinces. The Muslim religious point of view is the same throughout India and the Assembly is the proper place where the question ought to be settled.

387. The law would moreover become unworkable, if some Provinces adopt it and others either reject it or defer the question of its application. The Muslim community is a fairly homogeneous community not divided into castes and sub-castes. A Muslim of Malabar can marry another from Peshawar or Shillong. The barrier of caste or Province does not therefore exist in their case. How is the law to work, if the husband belongs to a Province which has adopted the law and the wife to another which has rejected it? Moreover, those anxious to marry their children at an early age may go to a Province where the law is not applicable and celebrate the marriage and the law may not be able to touch them. As a matter of fact there is a complaint that in Indian States like Baroda the law is broken by the people crossing over to British territory and

getting the marriage performed there. The difficulty will be greater where in British India itself conditions in the different Provinces differ. On the other hand, when once the law has been passed, our hope is that the silent pressure of the example of British India will force Indian States to come into a line on the subject and enact similar laws. We are unable therefore to agree to the suggestion.

388. *Exemptions in Marriage Law.*—Some of the members of the Committee consider it essential that the Marriage Law, when enacted, should provide for exemptions permitting marriages of girls below the prescribed age only in cases where the interests of the girl herself require such a marriage to be effected. In such cases, the District Judge should have the power to grant the exemption, conditional on securities being taken for separate living, custody and maintenance of the girl till the statutory age of Consent is reached. As the Committee is equally divided on the question of exemption or no exemption, and as there is also a diversity of opinion as to whether exemption should be granted only in case of girls beyond a prescribed age, the Committee makes no recommendation on the point.

389. *Conscientious objectors.*—In a case like the present, the new law will be nullified if we exempted the conscientious objector. Every member of the community most affected may declare himself a conscientious objector and avoid the penalties of the new law. We are unanimously of opinion that exemptions should in no case be granted on grounds of religion or conscientious objection. We should be very much surprised however to find, after the enactment of a law penalizing marriages, that there will be many cases of transgression.

390. *Marriages not to be declared void.*—We would like to make a few other recommendations in connection with the Marriage Law. The suggestion that marriages below the prescribed age may be declared invalid has been strongly opposed by most of the witnesses. Among the Hindus, marriage is held to be a sacrament, sacred and irrevocable. Any challenge to the sacred character of the tie would be a direct attack on religion which is sure to be resented. Among Muslims also a marriage contract is a highly meritorious act according to their religion and the general law declaring marriages below a certain age to be



invalid would be equally resented. *We recommend, that subject to any provision of the personal law for the time begin in force, the validity of a marriage held in contravention of the Marriage Law should be left unaffected.*

391. *Punishment for violation of Marriage Law.*—The question, what punishment should be prescribed for a violation of the Marriage Law, is not directly before us. We do not wish to go into details regarding this law, details regarding the persons to be punished or the maximum punishment that should be prescribed. We should however like to point out that most witnesses, who have advocated a Law of Marriage, are clearly of opinion that mere fine would not be a sufficient deterrent to prevent violations of the law. Statistics of early marriages in the Baroda State (Appendix XII) would show that the punishment of fine, which is the only form of penalty under the Marriage Law in that State, has not been successful in checking the evil of early marriage to any material extent. *We therefore recommend that the punishment prescribed for a breach of the Law of Marriage be imprisonment or fine or both and not a bare fine.*

392. *Bonds under Marriage Law.*—We may now consider the cases of breach of the Law of Marriage. We have already emphasized on the paramount need for such a law and we have suggested that a bare fine should not be the maximum punishment for the violation of the law. In spite of this, we cannot ignore the possibility of evasions of the law and in such cases it is necessary to consider how the girl can be protected. No doubt, the Age of Consent Law is there, but it may not be invoked by any one and cannot come into operation till the marriage has been consummated. It has therefore been suggested that preventive measures may be adopted in such cases so as to ensure the safety and well-being of the girl.

393. Where the Marriage Law has been broken, the judge may require the offender to enter into a bond, with or without sureties, for the separate living of the married couple, for the custody and maintenance of the girl and generally for the prevention of the consummation of marriage. These bonds will be executed by the parents or guardians of the girl and boy and where the husband is a major, by the husband also. The provisions which we have suggested with reference to similar bonds executed in cases

of breach of the Consent Law may be applied to these cases also. The power to vary the terms of the bond or to alter the custody may be conferred on the judge, and provisions analogous to those contained in Sections 122, 126, 126A and 406A of the Criminal Procedure Code may be enacted with reference to the violation of the Law of Marriage, in cases where bonds are required to be executed by the trying court. *We recommend that the court trying a case of contravention of the Marriage Law be empowered to require the offender on conviction to execute a bond, with or without sureties, for separate living, custody and maintenance of the girl and for preventing the husband from consummating the marriage before she completes the statutory age of Consent, and that the provisions of sections 122, 126, 126A and 406A of the Code of Criminal Procedure be extended so as to make them applicable as far as may be to sureties in cases of breach of the Marriage Law.* Consequently upon the above recommendation in respect of separate living, custody and maintenance of girls and similar recommendations made elsewhere, *we recommend that suitable aid and encouragement be afforded to the establishment of institutions giving protection to girls dealt with under such recommendations.*

394. *Act XV of 1872 to be amended.*—The law fixing 13 as the age at which Indian Christians can marry will have to be altered to raise the age to 14 when the new Law of Marriage is passed. *We recommend that Section 6 of the Indian Christian's Marriage Act (XV of 1872) be amended by substituting 14 for 13.*

395. *The age of Consent in marital cases.*—The primary question that has been referred to the Committee is whether any advance should be made in the present law relating to the Age of Consent in marital and extra-marital cases. In the preceding chapters we have clearly indicated the need for an advance in both classes of cases. It has not been equally easy to come to a conclusion as to what age may be recommended in intra-marital cases.

396. The difficulty consists in deciding whether the age should be on a *par* with the minimum age of Marriage or whether it may be slightly in advance of it. The arguments relating to the difficulty of applying the law, the undesirability of interference in family life and the possibility of wrecking the girl's life in the case of a successful

ful prosecution, have already been considered. The suggestion has therefore been put forward that the age of Consent should not be beyond the age of 14 and ought to coincide with the suitable age of Marriage. We have stated that that age has been recommended with a view not to disturb the practices of the conservative section beyond the necessary minimum. But we fail to realise the existence of a similar need with regard to the age of Consent. Several witnesses, some of them the most orthodox, have expressed their willingness to raise the age of Consent to 14 or even 15. Considerations of religious obligation are not so vital in this case as in the case of marriage. Though a few have relied on a Sloka (text) which recommends consummation immediately on puberty, the bulk of evidence distinctly proves that this injunction is honoured more in the breach than in the observance. While the reason for a compromise on the subject is not apparent, the reason for fixing the age of Consent at 15 is obvious on the other hand. We should like to refer to Chapter VIII where for a variety of reasons, medical, educational and social, the age of 16 has been suggested as the safe and proper age for motherhood. It will be detracting very considerably from the weight and value of these considerations if merely for the sake of parity the age were to be fixed at 14. Some have argued that the inevitable result of fixing the age of Marriage at 14 would be to advance the age of Consent to very nearly 15. We are unable to take such a hopeful view of the subject, especially so far as the immediate future is concerned. Nor do we feel that the law at 15 would be unworkable. A law of Age of Consent, unrelated to any law regulating the age of Marriage, may not prove effective. But a law fixing an age of Consent at 15 which closely approximates the minimum age of Marriage fixed by law at 14 is more likely to prove workable and to be reasonably effective. We expect people will, after marriage at 14, rather put off consummation for a year than risk a possible prosecution by a breach of the law.

397. There is also another weighty consideration which deters us from lowering the age below 15. The legislation by fixing so low an age as 14 would be setting up a wrong standard of what is considered a reasonably safe age for consummation. It is not an unreasonable apprehension that the progress now being made in raising the age of consummation by voluntary efforts may be arrested, and that

the age fixed by the Legislature after an elaborate investigation may be accepted by the public as the proper age of consummation. While we do not suggest that the Legislature should fix the age of 18 which is claimed by medical testimony as the ideal age, we feel that it can neither fix 14, an age which is declared unsafe. It has been suggested by some witnesses that the age of 14 may be fixed as a first step and that later the age may be advanced to 15 and even 16. We are unable to accept this suggestion. We deprecate the revision of a criminal law from time to time, particularly in a case where by such revision the customs and habits of the people will be constantly unsettled. In the best and highest interests of society, it is advisable to fix an age which will go as near the safe age as possible and help the communities concerned to settle down under the new conditions. *Such an age we believe is 15. We therefore recommend that the age of Consent within the marital relation be raised to 15 years.*

## CHAPTER X.

## THE AGE OF CONSENT OUTSIDE MARRIAGE.

398. *Nature of offence.*—The problem of suggesting a proper age of Consent outside the marital relation, *i.e.*, an age below which the consent of the girl will not be a defence on a charge of rape, is free from many of the difficulties and complications which surround the problem inside the marital state. Considerations of religion, of Shastric injunctions, of the rights of a husband or of the privacy of family life, have obviously no place in the solution of this problem. It depends for its solution mainly on the consideration as to what is the proper age till which a girl in this country needs the absolute protection of the law against a stranger, without any reference to her own wishes or inclinations in the matter.

399. *Severity of ancient laws.*—So far from religious injunctions being a barrier to an advance, as in marital cases, by legislation, the texts of both Hindu and Islamic Law prescribe the severest penalties for an offence of this nature. Nor does society look with anything but the deepest horror on the ravishment of a woman by a stranger. In fact the sentiment against the offence is so strong that some witnesses have suggested that consent should not be a defence, whatever the age of the woman may be. No legislation can successfully eradicate immorality or bring about an ideal state of society; it can only afford all reasonable protection to the people. Hence the need arises for defining till what stage a girl requires the protection of the law and when she should be deemed capable of giving her consent even to so reprehensible an act.

400. *Evidence in favour of advance.*—The evidence recorded by us conclusively proves that there is grave dissatisfaction with the law as it stands at present. Witnesses from all Provinces, and of all classes and communities have been practically unanimous in stating that the present age-limit is unreasonably low, and that there is urgent need for an advance. While some have suggested that the age may be raised to 16 years, and others to 21, a large majority has definitely declared in favour of 18 as

the proper age which the legislature ought to fix. Most of the witnesses who in their written statements suggested 16, readily and willingly agreed to 18, when orally examined before the Committee. From the trend of evidence of those who have appeared before the Committee, it is not unreasonable to infer that the large majority, even of those who have opined in favour of 16 but have not appeared, have been influenced in their judgment by the bill introduced by Sir Hari Singh Gour recommending 16 as the age-limit and referred to in our questionnaire, and that they too would have gladly favoured the higher age limit of 18. Even so, it has to be admitted that there are some—though very few—who would not favour an age-limit exceeding 16 years, and fewer still who will not have any change at all.

401. *Reasons for advance. Physical and Physiological.*—The reasons for an advance are fairly clear and have been put forward with great vigour by those who have advocated an advance in the age. Physically and physiologically a girl at 14 is not fit for the sexual act, and still less for the possible consequences of such an act. All the reasons that have been advanced with reference to marital cases from a medical point of view, apply with equal if not greater force in this case. It has been shown there that 16 years is the bare minimum, at which according to medical opinion, consummation may be justifiable or at any rate maternity may be reasonably safe. Whatever reasons may be urged or found expedient for lowering the age of Consent in marital cases, despite this strong medical testimony, and whatever grounds may exist for compromise where the husband is concerned, such reasons are wholly out of place and can have no application in the case of a stranger. It is clear therefore that on purely medical grounds alone, the age ought to be raised at least to 16.

402. *"Consenting Mind" absent.*—But there are other and more compelling reasons not merely for an advance in the age but for a larger advance than that above indicated. Under the existing law, where the woman consents to the act, the charge of rape cannot be sustained against a stranger. The question naturally arises, at what age a girl is capable of giving her consent to the sexual act. "Consent" has been defined as "an act of reason accompanied with deliberation, the mind weighing as in a balance the good and evil on each side." It is not suffi-

cient that the actual nature of the act is known and is acquiesced in. It is no doubt true that a girl of 16 may be presumed to know what is meant by the act. But the question really is not merely whether she knows the physical nature of the act but whether she is in a position to comprehend the serious consequences of the act, physical and moral. Is she in a position to realise the social degradation, the utter aloofness to which she would be subject in case she were found out? Can she realise the moral consequences of the act and the likelihood of the birth of an illegitimate offspring? It is pointed out that such a knowing state of mind cannot safely be predicated at 16 and that the law itself has given an indication as to when such knowledge or a capacity for it can be presumed. It has declared that an infant below the age of 18 years is incapable of entering into a binding contract for the disposal of her property because the disposing mind is not mature enough at that age. If therefore the disposing mind is still wanting at an age lower than 18 for the disposal of property, can it be said to be available for the disposal of what is far more precious, the disposal of one's own person? It seems therefore just and reasonable that the legislature should make an advance and fix an age not less than 18 below which the consent of the girl will be inoperative.

403. *Social changes and need for greater protection.*—There are other equally valid grounds advanced for an increase in the age. The Social system is undergoing a rapid change. The spread of education among girls has given them a greater freedom of movement, even among communities which observe Purdah, than was vouchsafed to their predecessors a generation back. Schools and colleges are to-day being attended in vastly superior numbers by girls of tender ages. The middle and lower classes are engaged in pursuits and occupations which a generation back would not have attracted their attention. As clerks and typists in offices and as factory workers in big industrial centres, girls below 18 are employed in much larger numbers to-day and such employment has necessarily placed them in a position where they need the utmost protection. The migration into cities and the gradual loosening of the tie of Joint Family, referred to already, have also placed girls of tender age, both married and unmarried, in a less

sheltered position than before. Under these altered circumstances of society, it has become increasingly necessary that law should step in and afford a greater protection than it has so far given. The age of 18 does not appear to err on the side of excess in the light of these circumstances.

404. *Serious consequences of offence.*—The offence itself is of such a nature, and the consequences to the girl are so disastrous in this country, that the protection of the law should be continued as long as possible. The social degradation to which a girl who has the misfortune to be involved in such an offence is subject, has already been referred to. Even where the girl has been wronged against her will, she is sometimes not even taken back into the family, particularly among the middle or higher classes. A stigma attaches to her all through life where she is unmarried and it is often very difficult to secure for her a suitable husband. In many cases, however innocent she may be, the husband discards her and her position is even worse where she is suspected to be a consenting party. The punishment of the law is not as severe as the penalties imposed on the girl by society and public opinion. It seems to be only fair that where such serious consequences are involved, the protection of the law should be afforded to the girl up to a reasonably high age.

405. *The amended law not to apply to unions before marriage in Assam and elsewhere.*—It has been brought to our notice that, in communities where courtship before marriage is permitted, it may cause hardship if the age is fixed so high as 18. In particular in the Assam valley (Upper Assam) there is evidence of a practice of young Assamese living for a few days in the jungles as husband and wife and on their return to their villages getting married with the approval of their parents. It is not our intention, however, that these cases should be dealt with under the proposed law.

406. *Parity with other laws.*—It may be pointed out that Section 376, Indian Penal Code, is one among the many sections which have been enacted to afford protection to the person of a minor girl. The law has penalised other acts involving a danger to the physical and moral well-being of a girl and in every one of these cases has imposed a higher age-limit than in the case of rape. Under



Section 366-A, Indian Penal Code, the procuration of a minor girl under 18 years of age is made punishable, and under Section 366-B, the importation of a girl from foreign countries, if she is below 21 years of age, is also penalised. Under Sections 372 and 373 of the Code, the selling or buying of a minor under 18 years of age for purposes of prostitution is punishable. Further, under Section 361, even the kidnapping of a girl under 16 years of age from lawful guardianship is made a crime. And yet a stranger having connection with a girl of 14 with her consent in the very house of the guardian cannot be punished. These are anomalies of the law which require immediate removal. Parity of reasoning and consistency of legislation alike, require that the age of Consent in extra-marital cases should be advanced to 18 years.

407. *Objections and answers.—Girls sexually mature at 14 and can realise nature of act.*—Such are the arguments advanced for raising the age. We may now examine some of the objections that have been put forward for not raising the age at all, or against raising it beyond 16 years. It has been stated by some that girls in India are precocious, that they attain puberty earlier than in Western countries, and are sexually mature generally at the age of 14 and certainly at the age of 16, and that it is idle to presume that they do not realise the nature of the act at those ages. This argument involves the fallacy that mind and body develop simultaneously and to the same extent. A physically mature body does not necessarily mean an intellectually mature mind. On the other hand with illiteracy to the extent that it prevails in the country, with opportunities so few to learn the ways of the world which an Indian girl has, and with the cloistered life that she leads, she is hardly in a position to realise the grave consequences to her whole future existence which the crime involves. The need for protection to girls is all the greater at this stage. The “Consenting Mind” is not present at that age and that must be a sufficient answer to the objection.

408. *Danger to boys and young men.*—A more serious objection has been advanced that boys of tender age, *i.e.*, below 18 years are not protected against the blandishments of girls over 16 and that such boys, while at the mercy of designing girls, will be penalised for what they are not wholly or even largely responsible. In considering this

objection, we may ignore the girls who are unchaste and who belong to the professional class of prostitutes, as their case will be considered separately. Among the ordinary classes who lead a normally chaste life, it is, we feel, an exaggeration to suggest that girls will often be the tempters of young boys of immature age. Such an hypothesis is wholly against experience and the danger, if it exists, must be held to be of such a small degree that it cannot prevail in the consideration of the question. Moreover we have sufficient faith in the discretion of the trying judge and are confident that in such cases the boy would not be given a disproportionate punishment. It has also been suggested by some, that not merely young boys below 18 will be subject to these temptations but even young men of higher ages will find it hard to resist the temptations or solicitations of such girls. Apart from the fact that such solicitation is bound to be very rare, we see no reason to consider leniently the case of a young man so tempted. A young man of that age is said to be liable to greater temptation than a girl of a similar or even lower age, because society is less severe towards an erring man than to a defaulting girl. That is a further good reason why the law should step in and punish the young man.

409. *Prostitute classes and blackmail.*—The case of prostitutes and girls in brothels requires separate consideration. It has been pointed out that an increase in the age to the extent proposed will give a handy weapon to the prostitute class, that blackmailing will be resorted to and that many innocent men will be unduly harassed. Blackmailing by prostitutes with reference to the charge of rape is not unknown at present and will not form a new feature of the amended law. But such blackmailing is resorted to in cases where consent is denied, and not generally in cases where the age of the girl is stated to be below the statutory limit. There is not much scope for it in the latter class of cases as the blackmailer himself or herself will in most cases be acknowledging guilt as an abettor of the offence. In the case of brothel-keepers, the argument against blackmailing is even stronger. We cannot ignore the tendency in several parts of the country to legislate for the suppression of brothels. In the cities of Bombay and Calcutta there are Acts of the local Legislatures prohibiting girls under certain ages from residing

in brothels. A bill for the suppression of brothels is now on the anvil of the Madras Legislative Council. The raising of age to 18 years will be particularly helpful in dealing with the growing evils of brothels in big cities.

410. *Living of prostitutes affected.*—It has been further suggested that in the interests of the prostitutes themselves, a lower age ought to be fixed. In many instances the only means of livelihood for these girls is said to be by a life of shame and it would not be proper for the Legislature to deprive them of their livelihood without providing for them an alternative method of living. The argument sounds sympathetic but will not stand the test of a closer scrutiny. In most cases, particularly in brothels, the young girls are unwilling victims, decoyed or forced to live the life of misery by false inducements or pressure. Led to it at an early age before they could realise what such a life means, they are caught in a system from which they find little means of escape. By preventing the initial fall, they will get a chance of earning a decent livelihood rather than become the objects of sympathy misplaced. In the case of girls of the prostitute class, the argument regarding livelihood has little application. In several Provinces there are hereditary classes of prostitutes known by different caste appellations like the Devadasis, the Bhogam caste, the Sulais, the Kanchanis, Naikens and Muralis. These girls live as in an ordinary family, the girl being taken care of by the elderly members, generally women prostitutes of the family. The necessity for independent earning for the girl is not dominant and hardly arises. If a girl is forced to a life of shame at an early age, it is because of the better price she often fetches and to augment the income rather than to find the bare necessities of life. It seems particularly necessary that a girl brought up under such surroundings should have a fair opportunity of deciding for herself whether she should follow the usual occupation or lead a moral and healthy life. It is most unfair that she should be driven to the profession before she can realise the disastrous consequences.

411. It has to be noted also that apart from legislative endeavours, there is a growing tendency among these classes to reform themselves. Various conferences have been held,

particularly in the Madras Presidency, at which men and women of these castes have strenuously pleaded for a breaking away from the old system. The advance in the age will strengthen the hands of those reformers who are fighting against heavy odds, and may go far towards removing the pernicious system of hereditary prostitution.

412. We do not ignore the fact that the law may not work satisfactorily, particularly at the initial stages, with reference to prostitutes. There will be many cases of violation of the law which will not come to light. There may be a few cases where harassing prosecutions may be instituted. But even so, the salutary effects of the law are bound to be great and decisive. The distinction of chaste and unchaste girls has been made in some western countries, a lower age being fixed for the latter. It is a distinction, however, which we do not feel called upon to recommend in the circumstances of this country.

413. Considering all the points for and against raising the age of Consent in non-marital cases we come to the conclusion that the age should be raised to 18. *We accordingly recommend that the age of Consent for the protection of a girl against rape by a person who is not her husband be raised to 18 years.*

414. *Punishment in extra-marital cases.*—The increase in the age of Consent in extra-marital cases, which we have suggested, necessitates a consideration of the question whether any distinction in the extent of punishment is desirable. We have already dealt with the hardship which may be caused when girls near the age of majority are alleged to have been outraged, though with their consent, by the accused. The amount of punishment is no doubt within the discretion of the judge and we believe that it will be exercised in favour of the accused, with due regard to the circumstances attending the commission of the offence, as far as possible in such cases. But it is argued that that discretion may still lean on the side of severity where the maximum punishment for the offence is as high as it is.

415. Under English law a distinction is made. Where the girl is below 13 years, the offence is a felony and carries a severe sentence; where she is above that age but below 16, it is a misdemeanour with less serious punishment to the accused.

416. A similar distinction is called for in view of the increase in age. A distinction may be made between girls below 16 and above that age. We accept the suggestion and recommend that in the case of rape, the punishment be transportation for life or imprisonment of either description for 10 years and fine, provided, where the girl is above 16 years and below 18 years of age and is proved to be a consenting party, the punishment may extend to imprisonment of either description for 2 years and fine.

417. *Defence of reasonable cause to believe.*—It has been suggested that in extra-marital cases it should be a good defence to prove that the accused had reasonable cause to believe that the girl had consented. The English law provides for such a defence. We note however that the Committee appointed in England to consider the question of offences against children and young girls has strongly recommended a modification of the law so as to do away with such a defence. In any case, we are not prepared to recommend the modification in view of the peculiar conditions of the country.

418. *Punish the Woman.*—Lastly, a suggestion has been made which we may shortly examine, if only to reject it. A few enthusiasts have seriously contended that the woman also may be punished if beyond a certain age and a consenting party. The contention cannot be sustained, not merely because it is against the whole trend of penal legislation on this and similar subjects in this or any other country, but even on its own merits. The offences of adultery and enticing away a married woman are instances in point. But a far more weighty reason for rejecting the suggestion lies in the social opinion of the people concerned. As has already been pointed out, the woman does not escape punishment but is heavily penalised by the social obloquy, and loss of caste and degradation—penalties often severer in their operation than what the law may prescribe.

419. *Incidence of the crime.*—There is only one aspect of the crime which remains to be examined. The incidence of this crime varies in different Provinces. In the absence of detailed information which unfortunately the tables of the several reports of the Inspectors-General of Police do not supply, it is not possible to estimate to what extent

the Amendment of the law in 1925 has been effective. We find, however, that during the years 1925, 1926 and 1927 there were 254 cases reported, nearly 50 per cent. of which resulted in convictions. In the United Provinces, 243 cases were reported in 1926 and 290 in 1927 resulting in convictions in 37 per cent. of the cases. In Bengal, about 125 cases were reported in each of the years, though the convictions amounted to only about 18 per cent. In the Central Provinces and Berar, the offences appear to be altogether disproportionate to the population. 162 cases were reported in 1925, 164 in 1926 and 209 in 1927, the convictions going up from 39 to 42 and 65 respectively. Madras is fairly free from this offence, both according to statistics of reported cases and according to the evidence of witnesses, the number of cases reported being 47, 62 and 59 and the convictions 13, 9 and 21 respectively.

420. We note that the reports of the several Police heads of departments are silent on the large incidence of such crimes in their Provinces or the reason for its growth. The Inspector-General of Police of the Central Provinces and Berar is however an exception and in his report for the year 1927 he states "The number of rape cases shows a tendency to increase, but whether this is due to greater prevalence of this particular form of crime or to increase in reporting consequent on an advance in general morality, I am unable to say".

421. The case of Burma appears to be exceptional. In 1925, the number of cases reported was 832; in 1926, 798 and in 1927, 914, resulting in convictions in 177, 176 and 209 cases respectively. The incidence of crime appears to be phenomenally large in this Province. We are unable to account for the large and disproportionate incidence of this crime in Burma. We however feel that a departmental investigation on the subject will not be unprofitable and is highly desirable.

422. *Amendment of Section 361, Indian Penal Code and Section 552, Criminal Procedure Code.*—In view of our recommendation that the age of consent in rape should be raised to 18 years, it becomes necessary to consider whether a revision of any other sections of the Indian Penal Code is required to bring about uniformity of the law in similar class of cases. By Section 361, Indian Penal Code, the taking or enticing of a female under 16

years of age out of the keeping of the lawful guardian of such minor constitutes an offence of kidnapping from lawful guardianship. It is desirable that the age for females should be raised to 18 in this section. Section 552 of the Criminal Procedure Code authorizes a Presidency Magistrate or a District Magistrate, on complaint of the abduction or unlawful detention of a female child under the age of 14 years, to make an order for the immediate restoration of such female child to her husband, parent or guardian. It seems to us that it is also necessary to raise the age in this section to 18.

*We recommend that Section 361, Indian Penal Code and Section 552, Criminal Procedure Code, be amended by substitution of the word "eighteen" for "sixteen" and "fourteen" in the two sections respectively.*

## CHAPTER XI.

## SUMMARY OF RECOMMENDATIONS.

The following is a summary of the recommendations made in the Report :—

1. That the age of Consent within the marital relation be raised to 15 years. (Para. 397 of the Report.)
2. That sexual intercourse by a husband with his wife below 15 years of age be made an offence, and that the said offence be included in Chapter XX of the Indian Penal Code dealing with offences relating to marriage. (Para. 273.)
3. That the said offence be called “Marital Misbehaviour”. (Para. 273.)
4. That Sections 375 and 376 of the Indian Penal Code be confined to rape outside the marital relation. (Para. 273.)
5. That the age of Consent for the protection of a girl against rape by a person who is not her husband be raised to 18 years. (Para. 413.)
6. That in order to deal most effectively with the evil of early marriage, and early consummation, a law be enacted fixing the minimum age of marriage of girls at 14 years. (Para. 384.)
7. That subject to any provision of the personal law for the time being in force, the validity of a marriage performed in contravention of the Marriage Law be left unaffected. (Para. 390.)
8. That measures be adopted to give wide publicity to the Marriage and Consent Laws and to carry on an educative propaganda. (Para. 331.)
9. That an accurate marriage register in a prescribed form be kept, through an administrative department of the Government, containing details of marriages including the ages of the couple, and that it be made obligatory by law on the parties and guardians of parties to the marriage, either personally or through authorised agents, to report the same to a prescribed local authority. (Para. 329.)



10. That certificates of marriage be issued to the parties concerned, free of cost, when the marriage is reported. (Para. 329.)

11. That the officer keeping the register of marriages be empowered and also be charged with the duty to complain of any breach of the Marriage Law, or any omission to report a marriage, or of a false entry in the details required in the registration of marriages, to the nearest magistrate having jurisdiction to try such cases, after such preliminary enquiry as he thinks fit to make. (Para. 329.)

12. That in all urban and rural areas, the father or other guardian of every child born shall, where not already required by law, report the birth of the child in such form as may be prescribed, within a stated time to a prescribed local authority and make a further report mentioning the name given to the child, if surviving, within a year of the birth, to the same authority. (Para. 323.)

13. That the prescribed authority be required to maintain a register of births within a given area under its control, and to take stringent steps to enforce registration and to prosecute persons who omit to send a report within the prescribed period. (Para. 323.)

14. That birth certificates giving the date of birth, sex, parentage and name of the child and such other particulars as may be prescribed, be issued free by the prescribed authority to the person making the report, when the name of the child, if alive, is reported to the said authority. (Para. 324.)

15. That the registers of marriages and births be permanently preserved. (Paras. 324 and 329.)

16. That the offence of Marital Misbehaviour do remain bailable and non-cognisable as in the case of rape by husband at present. (Para. 287.)

17. That the offence be non-compoundable, if the girl is under 12 years of age, and compoundable with the permission of the court, if she is between 12 and 15. (Para. 293.)

18. That it be made punishable with (a) imprisonment of either description for 10 years and fine when the wife is under 12 years of age and (b) imprisonment of either description which may extend to one year or with fine or

both, when the wife is between 12 and 15 years of age. (Paras. 274 and 275.)

19. That by the addition of a suitable sub-section to Section 562, Criminal Procedure Code, it be provided that in the case of Marital Misbehaviour the bond may, in addition to the present provisions, also provide for the custody, separate living and maintenance of girls and for such other conditions as the court may deem necessary to ensure the prevention of a repetition of the offence, the bond being executed either by the offender, or by his parent or guardian if the husband is a minor. (Para. 284.)

20. That where the accused is sentenced to fine or imprisonment in cases of Marital Misbehaviour, a new provision be made for bonds with or without sureties, being taken from the husband, or if he is a minor, from the parent or guardian for separate living, custody and maintenance of the girl-wife till she completes the statutory age of Consent, and that the court be empowered to rescind or vary the order or the terms thereof as may be necessary, from time to time. (Para. 286.)

21. That the provisions of Sections 122, 126A and 406A of the Code of Criminal Procedure be extended, so as to make them applicable, as far as may be, to sureties in cases of Marital Misbehaviour referred to in 20 above. (Para. 286.)

22. That the punishment prescribed for breach of the Law of Marriage referred to in para. 6 be imprisonment or fine or both, and not a bare fine. (Para. 391.)

23. That the court trying a case of contravention of the Marriage Law be empowered on conviction, to require the offender to furnish a bond, with or without sureties, for separate living, custody and maintenance of the girl and for preventing the husband from consummating the marriage before she completes the statutory age of Consent. (Para. 393.)

24. That the provisions of Sections 122, 126, 126A and 406A of the Code of Criminal Procedure be extended, so as to make them applicable as far as may be, to sureties in cases of breach of the Marriage Law. (Para. 393.)

25. That where girls under the prescribed age are made over to the custody of any individual or institution, under the foregoing recommendations, the court be empowered to

receive and examine periodical reports from the party concerned as to progress, good behaviour and other particulars essential to enforce a compliance of the law and the conditions of the bond, and to pass orders from time to time rescinding or varying the order or the terms thereof. (Para. 285.)

26. That suitable aid and encouragement be afforded to the establishment of institutions giving protection to girls dealt with under the foregoing recommendations. (Para. 393.)

27. That in the case of rape, the punishment be transportation for life or imprisonment of either description for 10 years and fine, provided, where the girl is above 16 years and below 18 years of age and is proved to be a consenting party, the punishment may extend to imprisonment of either description for 2 years and fine. (Para. 416.)

28. That women Police be employed, where available, to aid in the investigation of sexual offences, in taking statements of girls or women witnesses in cases of Marital Misbehaviour, rape and the like, and in protecting or accompanying the girls or women witnesses where necessary, when going to or from the court house or for medical examination; and that where women Police are not available, any respectable and disinterested women of the locality or neighbourhood be invited to be present, while the statement of the girl concerned or of any female witness is being taken by the Police. (Para. 312.)

29. That women willing to serve as jurors and assessors be empanelled in the trial of cases of rape or of Marital Misbehaviour. (Para. 297.)

30. That instructions be issued to trying judges and magistrates that in cases of Marital Misbehaviour, the discretion under Section 352, Criminal Procedure Code, be invariably used. (Para. 298.)

31. That where a medical examination of a girl is necessary, it be carried out by a woman doctor. (Para. 313.)

32. That separate waiting rooms wherever available be provided for girls and female witnesses in all court houses. (Para. 314.)

33. That a provision corresponding to Section 4 of Act XXIX of 1925 be made exempting from the operation of the proposed amendment, sexual intercourse with a wife

between 13 and 15 years of age if the girl wife was married and had completed 13 before the new Act comes into force. (Para. 316.)

34. That no complaint in regard to an offence of Marital Misbehaviour be entertained after the expiry of one year from the date of the alleged offence. (Para. 315.)

35. That in clause 1 (a), Section 561, Criminal Procedure Code, the words 'Marital Misbehaviour' be substituted for the words beginning with 'rape' and ending with 'wife'. (Para. 273.)

36. That consequent on recommendation 5, Section 361, Indian Penal Code, be amended by substituting the word 'eighteen' for 'sixteen'. (Para. 422.)

37. That Section 552, Criminal Procedure Code, be also amended by substituting the word 'eighteen' for 'fourteen'. (Para. 422.)

38. That Section 60 of the Indian Christian Marriage Act XV of 1872 be amended by substituting '14' for '13'. (Para. 394.)

39. That the law be amended, so that a suit by a husband for the custody of a wife or for restitution of conjugal rights shall not lie where the girl is below 15 years. (Para. 309.)

40. That effective steps be taken to spread general education amongst men and women. (Para. 337.)

### *Conclusion.*

*Acknowledgment.*—We have now come to the end of our task. The work of the Committee has been of absorbing interest. The appointment of the Committee marked a new departure. A survey of the social and religious customs, relating to such intimate subjects, has not been undertaken before by any non-official body nor has the assistance of the public been invoked to the same extent. The subject of our enquiry is easily understandable by all and the interest which has been taken in the enquiry has therefore been proportionate. The evidence that has been collected will prove of considerable use in regard to all attempts at social legislation in the near future. It reflects the hopes and aspirations, the fears and apprehensions of all classes with reference to social advance and the changes required in some

of the existing customs. We shall be failing in our duty if we do not express our sincere thanks to the witnesses, who so kindly responded to our questionnaire and many of whom came from long distances at considerable personal inconvenience, to help us in the enquiry. We are also indebted to the press in the different Provinces, whose publicity regarding the enquiry has facilitated our task. We have received assistance from various local Governments and Administrations and have been shown hospitality by non-official ladies and gentlemen all over India, which we acknowledge with gratitude.

The work of the Committee has proved much heavier than was at first imagined. The brunt of the work has naturally fallen on the Secretary and we should like to place on record our appreciation of the manner in which the Secretary, Mr. M. D. Sagane, M.A., LL.B., has discharged his responsibilities. The staff has had to work often at very great pressure and against time and their willing co-operation has been of great assistance to us. We desire to express our satisfaction at the work of the staff and in particular of that of Sardar Sahib Bur Singh. We submit our report.

MOROPANT VISHWANATH JOSHI.

\* KANHAIYA LAL.

A. RAMASWAMI MUDALIAR.

† M. I. KADRI.

MARY O'BRIEN BEADON.

(27th June 1929.)

† RAMESHURI NEHRU.

S. C. MITRA.

† THAKURDAS BHARGAVA.

‡ Md. YAKUB.

M. SHAH NAWAZ.

MUSSOORIE:

*The 20th June 1929.*

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\* Subject to my memorandum.

† Subject to a separate note.

‡ Subject to the observations made in my separate note.

## NOTES BY MEMBERS.

## NOTE BY RAI BAHADUR PANDIT KANHAIYA LAL.

While generally adhering to the recommendations made by the Committee, I desire to make a few observations to explain the religious aspect of some of the matters, dealt with in the Report, and to make a few suggestions, which may help to reduce and minimise the difficulties, apprehended from legislation on the lines recommended.

2. *Objections stated.*—One of the common objections, urged against social legislation, affecting the religious usages and rights of the people, is that the State should not interfere with the social and domestic affairs of the people, in which the necessity or measure of reform or advance must be left to be determined and adjudged by the people themselves, and that any such interference with those usages would be a breach of the promise, by which religious neutrality was guaranteed to the people. On every previous occasion, when any restrictive or enabling social legislation was attempted, the same argument was raised and pressed on the attention of the Government and the Legislature; and while there is some force in the contention that the religious usages and rights of the people should be respected, it will be useful to examine how far legislation, fixing a minimum age for marriage or raising the age of Consent within the marital state, would interfere with those usages or rights.

3. *Existing Legislative control.*—Section 85 of the Government of India Act, 1833, (3 and 4 William IV, C. 85), required the Governor-General in Council to provide by laws or regulations for the protection of the people “from insult or outrage in their religions or opinions”; and the Proclamation of 1858 strictly charged and enjoined all those, who may be in authority, “to abstain from all interference with the religious beliefs or worship” of the people on pain of the highest displeasure, and directed them “generally in framing and administering the law” to pay “due regard to the ancient rights, usages, and customs of India”.

4. Sections 17 and 43 of the Indian Councils Act, 1861 (24 and 25 Vic., C. 67), however, expressly empowered the Governor General to accord his sanction to the introduction of any measure, “affecting the religion or religious rights

and usages of any class of Her Majesty's subjects in India", and that power has been maintained by Section 67 (2) of the Government of India Act, 1919.

5. *Extended outlook*.—The reformed constitution has since then materially extended the popular control and widened the national outlook in respect of all matters, affecting the social, physical and intellectual advancement of the people. The responsibility of according or refusing the sanction still rests with the Governor-General, but the Government must naturally find it increasingly difficult to oppose a demand for social legislation, persistently urged by the people or their elected representatives. Indeed in almost all civilized countries, the State has attempted to regulate the age of marriage and consent by legislation, treating it as a matter of social and national importance; and though the ceremonial, attending a marriage in this country, has a religious value and significance for certain purposes among various classes, the social and national aspect of the question is of no little moment to the physical well-being and intellectual advancement of the people. The question of the competency of the Legislature to deal with the matter cannot, therefore, be seriously doubted.

### *Hindu Religious Standpoint.*

6. *Hindu Law Precepts*.—The question of propriety or expediency rests on other considerations. The rules of Hindu law, as observed by their Lordships of the Privy Council, are an admixture of morality, religion, and law; and it is not often easy to determine where religion ends, and morality or law begins. (Sri Balusu *versus* Sri Balusu, L. R. 26, I. A. 113, and Rao Balwant Singh *versus* Kishori, L. R. 25, I. A. 54.) A complete detachment of the moral precepts from their religious aspect is not always possible. But the rules of exegesis, followed in the interpretation of the Vedic texts, as applicable to the religious ceremonies, and elaborated by some of the later writers, have often been applied to the interpretation of these precepts. As a general rule, precepts, supported by a visible secular object, are regarded as mere admonitions, designed to emphasize the beneficial or injurious character of the course of action recommended; those, supported by an invisible secular object, have a greater binding force, and their violation is regarded as reprehensible, unless there are good reasons for doing

so; and those, which have a religious invisible object behind them, are regarded as mandates, which cannot be violated without defeating the object, for which the act or course of action is prescribed (*vide* Jaimini's Purva Mimansa, I, 3, 4; Apastamba, I, 1, 4, 9; and Viramitrodaya, and Priya Nath Sen's Hindu Jurisprudence, p. 241).

7. These rules rest on Vedic Texts and Smritis. The Vedic Texts are supreme and immutable. The Smriti texts are of varying force and authority according to their purport, context or object, or to the conditions, times, and country, to which they are intended to apply. The *Bhavishya Purana* divides the Smritis into five classes and says:—"Some relate to visible purposes, others to invisible purposes, a third class to visible and invisible purposes; the fourth rests on justice and equity; while the fifth only amplifies what is taught elsewhere. All these have their basis in the Vedas except the Smriti texts, which relate to visible purposes".

8. *Marriage in early times.*—The Vedic Texts lay down no specific age for marriage. They, however, indicate that in early times a marriage was essentially a union of two persons of full development, and this is shown by numerous references to unmarried girls, growing old in the houses of their parents or longing to seek a husband (Rig Veda, II, 17, 7). The unmarried daughter, who lived all her life with her parent, was called Amaju, and was often given a share of the ancestral property for her maintenance. (Macdonell and Keith's Vedic Index, Vol. I, pages 474 and 475.)

9. The choice of a husband generally rested with the young lady herself. She could select a man from a number of suitors and had for a time to remain unmarried, if she was unable to make a suitable selection. (Rig Veda, I, 27, 12.) In fact no girl was married before she reached her womanhood; and it was not till she was fully developed in the house of her parents that her marriage could be thought of. (Das's Rig Vedic Culture, p. 250.) In a hymn, addressed to the *Asvins*, the heavenly physicians, extolled as "the healers of the blind, thin, and feeble" and the saviour "of her who groweth old at home", an instance is given of a lady, living in her father's dwelling, stricken in years", who got married, when she nearly passed her youth. (Rig Veda, I, 117, 7; X, 39, 3.)



10. Among the hymns, recited at the time of the marriage even at the present day, is the welknown hymn, describing allegorically the wedding of the daughter of the Sun to the Moon. The daughter of the Sun here represents either a form of dawn or the rays or light of the Sun, which go to illumine the Moon. The Sun, addressing his daughter before she leaves for the bridal journey, sayeth :—

“ Let Pushan take thy hand and hence conduct thee;  
 may the two Asvins on their car transport thee;  
 Go to the house to be the household’s mistress and speak  
 as lady to thy gathered people.  
 Happy be thou and prosper with thy children here :  
 be vigilant to rule thy household in this home.  
 Closely unite thy body with this man, thy lord; so  
 shall ye, full of years, address your company.”

(Rig Veda, X, 85, 26-27.)

The Moon, addressing her, sayeth :—

“ I take thy hand in mine for happy fortune that thou  
 mayst reach old age with me, thy husband;  
 Gods, Aryaman, Bhaga, Savitar, Purandhi, have given  
 thee to be my household’s mistress.”

And then, praying to *Pushan*, the God of plenty, adds :—

“ O Pushan, send her on as most auspicious, her who  
 shall be the sharer of my pleasures;  
 Her who shall twine her loving arms about me, and  
 welcome all my love and mine embraces.”

(Rig Veda, X, 85, 36-37.)

11. The priests join in blessing the married couple and say :—

“ Agni hath given the bride again with splendour and  
 with ample life.

Long-lived be he, who is her lord : a hundred  
 autumns let him live.

Soma obtained her first of all; next the Gandharva was  
 her lord.

Agni was thy third husband : Now one born of woman  
 is thy fourth.”

(Rig Veda, X, 85, 39-40.)

The last is an allegorical allusion to the three stages of maturity, corresponding to the three signs of external development of a woman. At each stage a guardian angel is supposed to be in charge of the girl, bestowing in turn grace, melody or pleasing speech, and vitality to the budding life; and the suggestion is that a girl is not fit to be the wife of man till these three stages of development have been attained. The Smritis describe these three stages of physical maturity of a woman in greater detail, and suggest that she is not fit for man till these physical stages have been reached.

12. Referring to the sacrament of marriage before the Sacred Fire, the bridegroom says :—

“Soma, to the *Gandharva*, and to Agni the *Gandharva* gave;

And Agni had bestowed on me riches and sons and this my spouse.

Be ye not parted; dwell ye here; reach the full time of human life.

With sons and grandsons, rejoicing in your own abode.”

(Rig Veda, X, 85, 41-42.)

At the house of her husband, the bride is again addressed as follows :—

“Over thy husband’s father and thy husband’s mother bear full sway.

Over the sister of thy lord, over his brothers rule supreme.”

(Rig Veda, X, 85, 46.)

None of these hymns could have been applicable, if the young bride was a child, incapable of bearing children and unfit to discharge her duties as a wife and as the “queen” or mistress of the household.

13. The *Atharva Veda* has got a striking hymn, describing the advantages of *Brahmacharya* or self-restraint in the different spheres of wordly life. It says :—

“By fervour and by self-restraint the king protects the realm he rules.

By self-restraint the Master seeks a Brahmachari to instruct.

By self-restraint a maiden finds a youth to be her wedded lord.

By self-restraint the ox and horse seek to win fodder for themselves."

(Atharva Veda, Book XI, 5, 17-18.)

As girls were never married till they developed into youthful maidens, self-restraint was obviously the only means for obtaining a suitable husband out of the students, returning home on the completion of their studies.

14. *Implications of marriage ritual.*—The object of marriage was to secure the performance of *Dharma* or religious ceremonies and the continuance of the family line by *Praja* or offspring, or, in other words, to provide the husband with a help-mate, who would assist in the discharge of his duties as a house-holder and the performance of daily worship and be the mother of healthy, virtuous, and noble sons, for continuing the family line. And the ritual provided for the marriage contains various indications that the girl to be married in those days was not an immature girl but a youthful maiden, capable of bearing offspring. (Rig Veda, Book X, 183, 2.) The *Grihya Sūtras* describe in detail the marriage ceremony; and the *mantras*, used at the time speak constantly of the approaching physical union and of the bride's coming mastery over her new household. After the bride and bridegroom have gone round the sacred fire seven times, the husband thus addresses his wife:—

"Having taken these seven steps with me, be thou my companion; nay, having paced the seven steps together, we have become companions. May I retain thy companionship and never part from thee, nor thou from me. Let us be united. Let us always take counsel together. Loving each other and ever radiant in each other's company, let us be united in mind; and growing together in strength and prosperity, let us join in our aspirations, our vows, and our thoughts. Thou art the Rik, I am the Saman; I am the sky, thou art the earth; I am the semen, thou art its bearer; I am the mind; thou art the tongue. Follow me faithfully, that we may have wealth and children together."

15. On reaching home, they resume the ceremonies before the sacred fire, that has been duly brought from the house of the bride with appropriate hymns, invoking blessings for the youthful couple with good progeny and life-long happiness. They are, thereafter, required to lead a life of perfect continence for a period, extending from three days to a year according to their capacity; and the reason for that continence, as explained by Baudhayana, is that the longer the period of continence, the better is the chance of obtaining a superior type of a son. When meeting for conjugal union, the husband says to his wife :—

“ I see thee pondering in thy heart, and praying that in due time thy body might be fruitful.

Come as a youthful woman, rise to meet me, spread in thy offspring, thou who cravest children.”

(Rig Veda, X, 183, 2.)

It is clear, therefore, that the bride and the bridegroom must have been grown up men and women, eager to live as man and wife and to raise a worthy offspring.

16. *What the Smritis say.*—The Smritis, on the other hand, generally recommend the marriage of girls before puberty, though they are supposed to follow the Vedas in what they teach. Jaimini recommends a girl, who is *Anagnika*, or one who has developed a feeling of modesty about her person.\* Gobhila recommends that an infant girl (*Nagnika*) was the best (*Shreshtā*) for marriage;† but he forbids the consummation of the marriage till the girl has developed the signs of maturity.‡

17. Gautama recommends marriage before puberty in clearer terms and condemns the father, who does not give her in marriage before puberty.§ Manu merely says, “ Reprehensible is the father, who does not give his daughter in marriage at the proper time; reprehensible is the husband, who does not approach his wife in due season; and reprehensible is the son, who does not protect his mother after the death of her husband.|| It is not neces-

\* Jaimini Grihya Sutra, XX, 1.

† Gobhila Grihya Sutra, III, 4. 6.

‡ Gobhila Smriti, III, 136.

§ Gautama, XVIII, 21-22.

|| Manu, IX, 4.

sary to go very far to see whether what Manu has said above is an absolute mandate or a recommendation, for he goes on to say that if a suitable husband cannot be obtained, it would be better that the girl should remain unmarried even after attaining puberty for the whole of her life than that she should be married to one, devoid of good qualities.\* He further says that if a father has neglected to arrange for the marriage of his daughter for three years after the attainment of puberty, the girl has a right to select a husband for herself; and Baudhayana affirms the same view.† Yagnyavalkya considers the father sinful, if he does not give his girl in marriage after she attains puberty.‡ But Manu explicitly says that if the girl selects a husband herself after waiting for three years of her attaining puberty, no sin attaches either to her or to the person, who marries her.§ Parashara and a few others, on the other hand, consider that a person, who marries such a girl, should be considered degraded and unfit to be spoken to or to dine with, though they do not regard such a marriage as invalid.||

18. *Influence of changing conditions.*—The question is what religious value can be attached to these precepts or directions. They undoubtedly emphasize the desirability of marrying a girl before puberty; but they are hardly in consonance with the practices, recognised during the Vedic and Sutra periods. During those times almost every boy of the higher castes had to lead the life of a student with his preceptor, and was educated and trained to lead the life of a householder on the completion of his studies; and no boy was thus ordinarily available to whom girls could be married at an early age¶. But with the spread of Budhistic influences, a sharp cleavage was brought into existence between the old and the new ideals. The life of a householder was denounced, and undue religious stress was laid on a life, devoted to meditation and the renunciation of worldly pleasures from early age. The importance of leading a celibate life as a means to an end engaged increasing attention; and the old division of life into four stages, including those of a student and a householder,

\* Manu, IX, 89.

† Manu, IX, 90; Baudhayana, IV, 1, 14.

‡ Yagnyavalkya, I, 64.

§ Manu, IX, 91.

|| Parashara, VII, 7.

¶ Manu, IV, 1.

which were necessary preludes to the life of an anchorite or wordly renunciation,\* gradually fell into disfavour.

19. *An anti-dote for premature Sanyasa.*—With a popular rage for celibacy and the early renunciation of worldly life, the fate of the increasing number of little girls, remaining unmarried, can be better imagined than described; and an anti-dote was obviously needed. The country was flooded with monks and nuns in every direction; and there was no other way to restrain and dissuade the people, men and women, from adopting a life of premature renunciation of perpetual mendicancy than by tying them up or binding them very early to a married life; and that was the course, which commended itself to the then sages, or the repositories of the writings of the ancient sages, whose words still inspired respect.

20. Armed with religious sanction, and hallowed by the authority of sacred names, the practice of marrying girls before puberty soon grew into popularity; and in defiance of the ancient recognized practice, boys were recalled, before they had proceeded a few steps from their houses to pursue their studies with some distant preceptor after they were invested with the Sacred Thread, to enter into the life of a householder as early as practicable or at any rate before they attained the age of discretion. The advent of foreigners in the country possibly helped to accentuate or crystallise the practice; and despite the decline of Budhistic influences, it has managed to stay with all its concomitant disadvantages to the health and physique and intellectual advancement of the people.

21. *An apparent conflict.*—Whatever may have been the actual reasons for this departure from the ancient practice, for nothing but speculation in a matter like this is possible in the absence of any reliable data, it is unquestionable that the Vedas are regarded as a source of Sacred Law, and where there is a conflict between the Vedas and the Smritis, the authority of the Vedas is regarded as paramount.

22. Referring to the Vedic text that a girl is in charge of the Gods, Soma, Gandharva, and Agni, while she is in the course of development, Atri says:—

“Women are first enjoyed by the Gods, Soma, Gandharva, and Agni. Men enjoy them after-

wards, and they are not spoiled in consequence. When the (first) marks of development appear, Soma enjoys the maiden; on the appearance of the breasts, Gandharva; and on the appearance of menses, Agni. This is established.”\*

So says Samwarta :—

“Soma enjoys a maiden, when she develops pubic growth; Gandharva, when the menses appear; and Agni, on the appearance of the breasts.”†

Vashishta, Baudhayana and Yagnyavalkya explain this as meaning that Soma gives the girls cleanliness; Gandharva, their melodious voice; and Agni, the purity for partaking in religious ceremonies.‡

Gobhila specifically mentions that a man should not have intercourse with a girl, who has no marks of puberty and no public growth.§

23. These precepts coincide with the Vedic practice; and if other precepts suggest a departure, they cannot be deemed to override the Vedic law, which permitted a girl to marry at any age, but can only be regarded as recommendations, made to suit particular times and changing conditions.

24. *Smritis, how far directory or mandatory.*—The Smritis contain numerous precepts of an admonitory or recommendatory character, intended for the guidance of those, following the Sacred *Dharma*. Some are admonitory, intended to appeal to the moral sense.|| Others are directory rules, by observing which one secures better what may be securable otherwise. Then there is a class of rules, which are mandatory and the observance of which would secure the object, which would be otherwise absolutely unsecurable.¶

25. The *Samskaras*, laid down by the Smritis, are obligatory, but the time when they are to be performed is not necessarily so. For instance, the rule that one should marry his daughter before she arrives at a certain age, or

\* Atri, V, 5, 9.

† Samwarta, 64.

‡ Vashishta, XXVII, 6; Baudhayana, II, 2, 4; Yagnyavalkya, I, 71.

§ Gobhila Smriti, III, 136.

|| e.g., Manu, III, 8-11; IV, 32-34; Yagnyavalkya, I, 54-55.

¶ Sirkar's *Mimansa Rules of Interpretation*, pp. 42, 181.

that in adopting a son, one should adopt a boy, not exceeding a particular age, is regarded as directory in nature.\*

The prohibition of a marriage within certain degree is mandatory, the non-observance whereof would vitiate marriage; but the direction of Manu that the bride must be an amiable and healthy girl, or of Yagnyavalkya that she should have a brother and that she should be younger in age and neither sickly nor garrulous has a visible object behind it; and the transgression of such a rule would not make the wife unlawful.†

26. Numerous instances may be given, in which practices, reprobated by the Smritis, have become common while others, allowed by them, have been actually discarded in practice or forbidden by custom. Thus a person is not allowed to give his only son in adoption, for he is intended to perpetuate his father's line; but this rule has been held by the highest court in the land to be merely of a recommendatory character.‡ Again, a person is not permitted to marry before his elder brother except where the latter is living in a foreign country or is physically or mentally unfit; and a younger brother who disregards that rule and the woman, whom he marries, and also the priests are regarded as sinners, destined to "fall into hell"§ but that rule is nowhere regarded as anything more than a pious recommendation rather than an impediment to such marriage. Manu forbids marriage with the daughter of a maternal uncle|| and allows marriage with a girl of an inferior caste;¶ but the former practice is common in Southern India, while the latter is regarded as forbidden.

27. *Rules for Civil conduct in religious garb.*—It was usual for the sages to clothe even a moral or hygienic precept in a religious garb to make it generally observed or respected by the people, but its violation, though often stigmatised as a dereliction of duty or sinful, did not carry with it any religious degradation or disability. Indeed, the distinction between civil conduct and religion was so completely overlooked that Manu, in more instances than

\* Sirkar's *Mimamsa Rules of Interpretation*.

† Ibid, p. 502, Banerji's *Hindu Law of Marriage and Stridhan*, pp. 48, 76.

‡ *Sri Balasu versus Sri Balasu*, L. R. 26, I. A. 113.

§ Manu, III. 171-172; XI. 61; Parashara, IV. 23; Baudhayana, II. 1, 39; and *Udvah Tatwa* by Raghunandan, Vol. II, p. 66.

|| Manu, III. 5; XI, 172-173.

¶ Manu, III, 12, 13; IX, 23; *contra* Yagnyavalkya, I, 56.



one, provides purely religious sanctions for rules relating to civil rights. Thus when laying down the law of inheritance, he ordains that those, who divide among themselves certain articles, belonging to the women of the family, or neglect to maintain certain persons, excluded from inheritance, become out-casts or fall deep into sin.\*

28. The rule, recommending marriage before puberty or permitting a girl to select her own husband, if her father or guardian neglected to marry her within three years of her attaining puberty was intended to carry no greater religious sanctity than any other moral precept, the observance of which was enjoined in equally strong language; and at best, to use the language of the majority of the learned Pandits, gathered at the Conjeevaram and Thiruvadi Conferences, marriage before puberty can only be regarded as a superior alternative or primarily best (*Mukhya Kalpa*) and that after puberty as a secondary or inferior alternative, admissible in case of necessity (*Gauna* or *Apat Kalpa*).

29. *Sin Theory*.—The sin theory, as applied to post-puberty marriages, is a later development, which finds no countenance in Manu.† A departure is permitted by Manu, where a suitable husband is not available or other good reasons stand in the way. In fact the right of a father to give his daughter in marriage continues, according to Manu, Baudhayana and other Smriti writers, up to three years after the attainment of puberty.

30. *Duty to approach wife*.—The duty of a husband to approach his wife after the first four days of the menstrual period is clothed in equally strong language by reason of the moral or religious obligation, cast on him to beget children to pay a debt due to his ancestors, and he is enjoined to approach her on even nights, if he wants to have male issue. That rule can hardly be regarded as mandatory. Manu says that excepting the first four and the eleventh and the thirteenth nights of the menstrual season, the remaining nights are “recommended”;‡ and Yagnyavalkya suggests that leaving certain Parva nights and constellations, a man should act even at other times according to his wife’s desire.§ The

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\* Manu, IX, 200, 202.

† Manu, IX, 91.

‡ Manu, III, 45-48.

§ Yagnyavalkya, I, 81.

sages had no temporal authority, and as in the case of other religions a warrant of commitment to Hell was the only sword of Damocles, which they and their spiritual successors could brandish, to warn their erring followers against discarding their advice.

31. *Process of adjustment to changing conditions.*—

The Smritis purport to lay down different rules for different ages. From time to time the Smriti law adjusted itself to new social wants and growing usages, and this process of adjustment, carried on by the disciples of ancient sages whose names they perpetuated, is responsible for the discrepancies, which we find in the sacred texts.

32. "The changes which have taken place in the course of time", says Sir Gurudas Banerji, "both in the internal structure and external surroundings of Hindu Society must have continually presented motives for deviating from the rules laid down in the primeval code,—motives which could not but be insufficiently counteracted by the spiritual sanctions, by which most of those rules were enforced. This led to innovation; and what was excused as necessary or desirable innovation in one generation, came to be revered as a custom in the next; and thus have been brought about slowly but steadily, those numerous and important changes in the Hindu Law, which may be seen at a glance by comparing the prevailing practices of the Hindus with those enjoined or reprobated in the Institutes of Manu or any other ancient sage" (Banerji's Hindu Law of Marriage and Stridhan, p. 5).

33. "The Rules of the Shastras", says Golap Chandra Sarkar, "in so far as they related to secular as distinguished from purely spiritual matters, are not inflexible, but may be modified or replaced, if repugnant to popular feelings, or if in the opinion of the learned the exigencies of Hindu society require a change. The Shastras do not present any unsurmountable difficulty in the way of social progress, and the Hindus may reconstitute their society in any way they like". (Shastri's Hindu Law, 5th Edition, p. 24.) Mahamahopadhyaya Pandit Pramath Nath Tarkabhushana, the Principal of the Oriental College of the Benares Hindu University, says in his evidence that it can be proved from the *Dharma Shastras* that there have been instances where, owing to the change of time and social conditions and other causes, the *Dharma*

was changed, the *Āchāra* was changed; and if circumstances so arise, they can be changed again. The Parashara Smṛiti professes to lay down the duties to be observed in the Kali age; but it is significant that while Parashara is considered as an authority, when he lays down that a person, who marries a girl after puberty, is degraded and not fit to be spoken to or to dine with, his directions are disregarded, when he permits the remarriage of a woman, if her husband is dead or missing or has become an ascetic or an outcast.\* If Parashara is considered an authority for the Kali age for one class of precepts, is there any reason why his authority is discarded for precepts of another class, propounded in the same Smṛiti?

34. *Necessity for Legislation.*—The evidence adduced shows the grievous results to the health of the mother and her progeny, where early consummation is effected. Early consummation cannot, however, be effectively prevented, unless marriage is postponed, so as to reduce the chances of early maternity. Sushruta, one of the greatest authority in Ayurvedic medicine, lays down :—

“ If a woman below sixteen years in age is impregnated by a man below twenty-five, the foetus withers away in the womb; in case a child is born, it is short lived; if it lives, it remains weak in body and limb. Impregnation should therefore never be effected, while a girl is still very young.”

Charaka, another great Ayurvedic authority, says that the strength of the progeny depends, among other things, on the youth, strength and mental state of the married couple. Vagbhatta says that if strong progeny is desired, a marriage should not be consummated, till the girl is sixteen, and her husband, twenty years old. Indeed so great was the value set in olden times on strong and vigorous offspring that a wife was applauded in the *Bṛihat Aranyak Upanishad* for bearing such offspring, as for nothing else, in the following terms :—

“ Thou, strong woman, hast borne a strong boy. Be thou blessed with strong children; thou hast blessed me with a strong child. And they say of such a boy, ‘ Ah, thou art better than thy

father; Ah, thou art better than thy grandfather.' Truly he reaches the highest point of happiness, renown, and Vedic glory, who is born of a Brahmana, that knows this."

Is this possible with child-wives, whose life blood has been sucked, before their physical frame has matured, even attained adequate development, or has the necessity for such offspring now disappeared? If the tale of high infantile and maternal mortality in the country and the sufferings of early mothers, producing weak and shortlived progeny, are not sufficient to impress the public mind, the large percentage of recruits, who sought admission in the Army or the Police during and after the war and were rejected for not coming up to the proper physical standards, ought to awaken the public conscience to the progressive physical degeneration of the people.

35. Without general education, the progress of social reform in a vast country like India must necessarily be very slow; and in the absence of any religious or temporal authority, such as existed in the olden days, to adapt the rules, laid down in the Smrities, to the changing conditions and to enforce them by strict religious or temporal sanctions, legislation is the only remedy by which the further physical deterioration of the people can be prevented.

### *Muslim Religious Standpoint.*

36. *Muslim Authorities.*—A consideration of the religious aspect of the question from the Muslim standpoint presents somewhat less difficulty. The Muslim Law does not fix any age for marriage, and recognizes the right of a girl to marry at any time. According to the Shafi Law, no relative, except a father or paternal grandfather, has the power of contracting in marriage a boy or girl under the age of puberty; but under the Hanafi Law, where there is no father or paternal grandfather, any other guardian of a girl has also authority to marry a girl during her minority. Except where the marriage is celebrated by the father or grandfather, who is naturally expected to study the interests of the girl as much as the girl herself, a girl has, however, the power to repudiate her marriage on attaining puberty, which in the absence of other evidence is presumed in law to be attained on the

completion of the fifteenth year. Among the Qadiani and certain other sects, even a marriage, celebrated by the father or grandfather, can be repudiated by a girl on attaining puberty.

37. The marriage of a minor girl by a guardian is virtually an exception, and is not encouraged by the Muslim Law; and many of the Muslim witnesses have recognized the evil of early marriage and early consummation, prevalent among certain classes of Muslims in different parts of the country, and recommended that a minimum age of marriage may be fixed for all classes at fifteen years.

38. The Quran, indeed, contemplates an age of marriage, coeval with the development of mature understanding, to ensure the prudent management of affairs. Dealing with the circumstances, arising out of the battle of *Uhud*, in which a large number of Muslims were killed, the Prophet directed his followers to "give to the orphans when they come to age their substance" and he advised them that if they feared that they could not act with equity towards the female orphans under their care, that is, as explained by Al Baizawi, by marrying them against their inclinations for the sake of their riches or beauty or by not using or maintaining them so well as they ought, they could rather marry other women not exceeding four, provided they could act "equitably" towards them all. He further directed them not to give to those, who were "weak of understanding", the substance which God had appointed them to preserve for them, but to maintain and clothe them throughout; and to examine or train the orphans in order to befit them to manage their affairs "*until they attain the age of marriage*" (*Hattaiza Balghun Nikah*)).\*

39. Al Baizawi, referring to "the age of marriage", above-mentioned, describes it to mean the age of maturity, which he says is generally reckoned to be fifteen and supports it by a reference to the tradition of the Prophet. Can that description be applied to a girl of tender years? In fact the word "*Nikah*", means in common language "*embracing or bonding*" and in a legal sense a contract, which purports to legalise cohabitation; and its essentials, according to Abu Hanifa, are puberty, freedom, and consent of the contracting parties.

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\* Sale's Quran, Ch. IV.

40. *Al Hasan Al Basri* says that during the dark ages, that is before the Islamic Era, any man, who had in his charge female orphans, one of whom it was lawful for him to marry, used to take her in marriage for the sake of her property, though he did not like her, lest an outsider should marry her and share her property. After marrying her, the guardian used often to ill-treat her, and lived with her on bad terms, wishing that she might die, so that he might inherit her property; and God stigmatised this, and directed that a person, who had a female orphan in his charge, should take in marriage any other woman, he liked, if there was reason to fear that the female orphan was likely to be wronged by his marrying her, and that he should look after her till she attained the age of marriage or fitness to manage her affairs.

41 There is a passage in *Bijairimi*, which strikingly illustrates the spirit of the Muslim Law in recommending marriage after puberty to enable the girl to exercise her own choice. Referring to what the Prophet said to *Al Moghirah bin Sho' Abah*, who had asked for a certain woman in marriage, "Look at her, for it will be conducive to the durability of friendship and harmony between you", *Bijairimi* states that a man intending to marry a woman should see her, and the time for seeing her should precede the betrothing. If he is not pleased with her, he should keep silence, and should not say "I do'nt want her or she is so and so", lest she may feel annoyed at the same. The woman is also recommended to have a look at the man, if she wants to marry him, because what may please her with him may please him with her; and each can see the other again to discern the features of his or her object, so that he or she may not repent after the marriage (Abdul Qadir's Muhammadan Law, Syrian Edition, page 218).

42. It is also significant that where a girl is married by her father, grandfather or other guardian during her minority, she is entitled to sue for the cancelment of her marriage, if the husband is unequal in religion, descent, freedom, or character. Equality is required, according to the *Raddul Muhtar* on the part of the man, not on the part of the woman, but the right to cancel the marriage cannot be exercised after the birth of an issue. It is also stated in the *Raddul Muhtar* that if the wife is too young to cohabit, she shall not be delivered until she becomes capable.

43. These considerations are pertinent to suggest that the fixing of a minimum age for marriage, sufficiently close to the age of puberty, which is presumed to be attained on the completion of the fifteenth year, would not be inconsistent with the spirit of the Muslim Law.

44. *Muslim Evidence*.—Kwaja Hasan Nizami, a respected theologian of Delhi, says that the marriage of a girl, not sufficiently strong physically to bear the burden of maternity, was decidedly against the teachings of Islam, that early marriage was a positive menace to the health, and that if the teachings of religion were to be properly carried out, it was but fair and just to the females that marriage should be postponed till they attain a safe age. Dr. Mufti Muhammad Sadiq of Qadian states that the marriage of girls should not be allowed except at an age, when they are able to understand what is good for them, that the Islamic injunctions under that head required that a woman should never be married except with her own free will, and that so long as a woman had not attained the age of discretion, her consent was a mere deception and had no value at all. Syed Nawab Ali, a resident of Lucknow and at present Principal of the Bahauddin College, Junagadh, states that the law of Islam in such matters was elastic, and judged in the light of the teachings of the Prophet, progressive; and he would have no objection, if a reasonable minimum age for marriage was fixed by legislation with a clause, permitting exemptions in suitable cases, as in Baroda. Syed Jalaluddin Hashmey of Jotulia, who belongs to a hereditary priestly family, states that there was no injunction against late marriages, and that it was necessary in India that a minimum age for marriage should be fixed by legislation. Syed Afzal Hussain of Fyzabad, referring to some Hadis from Imam Jafar Sadiq, quoted in the *Wasi-ul-Shiah*, wherein it is stated that virtuous was one whose daughter did not have menses in her father's house and that unmarried girls were like fruits, not to be spoiled, when ripe, says that they were only recommendations and were not absolutely binding.

45. The Hon'ble Syed Wazir Hasan of the Chief Court, Lucknow, states that he did not think that the fixing of an age of marriage by legislation would be an interference with Islam, but he was opposed to such legislation, because it would be treated by the people as an interference with

their domestic affairs, and create strong resentment in the country. The Hon'ble Mr. Justice Agha Hyder of the Punjab Chief Court says that the Muslim Law lays down no injunction for males and females to marry at a particular age, that primarily it was a question of puberty, and that the fixation of a minimum age for marriage by legislation would not conflict with the Muslim Law, if it was fixed close to the age of puberty, which was in any case presumed to be attained in the sixteenth year.

46. It is hardly necessary to refer to the other evidence in detail, because it does not specifically deal with or throw light on the religious aspect of the question. Some of the theologians invited did not unfortunately appear; but there are not wanting witnesses of position and standing, who have opposed legislation for a minimum age of marriage either because, according to their view, the evil is not so rampant among the Muslims, or because they believe that the matter should be left to be adjusted by social propaganda. There is also a class, which thinks that such legislation would interfere with the liberty, now given by the Muslim Law, to give a girl in marriage at any time.

47. Moulvi Inayet Ullah of Lucknow says that if such legislation is necessary in the interests of the country, a Muslim ruler has the power to enact it, or the leaders of the community can agree to the same.

The State in India has an equal, if not a deeper and wider, interest to adopt measures for the protection of the people and of minors in particular irrespective of caste or creed.

48. The abolition of slavery was considered essential in the public interest, and restricted the rights given by the Muslim Law, but its abolition in 1843 gave rise to no opposition. The removal of the disability, attaching to apostasy or conversion in 1850 has affected in some respects the Hindu and Muslim Laws; but no noticeable discontent has arisen in consequence. The Land Alienation Acts and the Settled Estates Acts of various Provinces have curtailed the rights of Muslims and other persons to alienate their property according to their pleasure; but those provisions have met with general approval. The Oudh Laws Act, 1876, allows a court to reduce the amount of dower in certain circumstances, and the benefit of that



law is being widely claimed by the Muslims themselves in numerous cases. The Oudh Estates Act, 1869, has altered the line of inheritance to the Estates in Oudh; and it allows the Muslim Taluqdars to make a will in respect of their Estates and to make an adoption in derogation of the Muslim Law, and yet those rights are regarded by the people as valued privileges.

49. *Early Marriages among Muslims.*—The Census figures for 1921 show that early marriages are rampant more or less among large classes of the Muslim population in almost every Province, and it would be fatuous to suggest that they should be left to stew in their own juice. Their advancement and uplift are as much necessary for national reconstruction as the advancement or uplift of other communities; and no disturbance or interference with their religious rights need virtually be apprehended, if all that is recommended is some legislation for the protection of minor girls, laying down the line along which the choice or option, given to the people by their religious law, is to be exercised.

50. Every civilized country, including Egypt and Turkey, has taken steps to protect its future manhood by stringent legislation, invalidating marriages before the prescribed age. Beyond a preventive measure, penal in character, there is no attempt or suggestion here to render such marriages invalid. Would it be wise in the circumstances, to wait and perhaps wait indefinitely for any such measure till the light of mass education, not yet in the horizon, or the extension of suffering leads people to realize the magnitude of the evil?

#### *Need for Dispensation in Hard Cases.*

51. The safeguards, adopted in other countries to meet cases of hardship should not, however, be excluded from consideration in fixing a minimum age for marriage in this country. The possibility of resentment or opposition will be considerably minimised and the sympathy of the people will be attracted, if an earnest attempt is made to meet all cases of hardship by providing for exemptions in urgent and exceptional cases.

52. *Exemptions in urgent and Exceptional Cases.*—During the course of our enquiry in rural areas, a pathetic appeal was addressed to us by some village people, asking

what would happen to their daughters, if they were sick or dying, and there was legislation, forbidding marriage before the prescribed age. They asked whether the *Panches* or the *Sarkar* would provide for the protection of their girls and arrange for their marriage after their death, or pay the cost of a caste dinner to enable them to be re-admitted into the caste and get married, if perchance they went wrong. Very little has been done during the last hundred years to give the masses the benefit of general education, or to teach them by active social propaganda that it was to the interest of their progeny that the marriage of girls should not be celebrated or consummated at an early age; and if they still believe and follow the practices, which have been in vogue for centuries, does it stand to reason that we should try to restrain them by penal measures from following those practices without any serious attempt to meet or mitigate the difficulties or hardships, they have pointed out? Economic considerations weigh heavily with these people; and their argument and appeal deserve to be considered with sympathy rather than with scornful indifference.

53. *Conscientious Objectors*.—The case of the orthodox classes stands on a somewhat different footing. They claim exemption from the marriage legislation, because they believe in a religious obligation to marry their girls before puberty. But there is a growing body of public opinion, even among the orthodox classes, which does not accept the argument in favour of religious obligation, and there are many communities, such as the Nambudri Brahmins of Malabar, the Saraswat Brahmins of Punjab, the Gaud Saraswat Brahmins of Bombay, the Kulin Brahmins of Bengal, the Kanyakubja Brahmins of the United Provinces and others, who have no objection to marry their girls after puberty, and practice post-puberty marriage, whenever it suits their convenience or will. Even in the Madras Presidency the views of the Brahmin witnesses examined are far from unanimous; and marriages are allowed to take place after puberty, though the fact of puberty is not in such cases always disclosed.

54. The *Smritis*, undoubtedly, commend the marriage of a girl before puberty, but wherever such a marriage cannot for some reason or another take place before puberty, they expressly permit the parents or guardian to arrange it within three years of puberty.

The Madras and Central Provinces Legislative Councils have already unanimously passed resolutions, supporting marriage legislation, fixing the minimum age for marriage at sixteen and fourteen years respectively, and no general exemption in favour of any class of conscientious objectors can, therefore, be recommended.

55. *Grounds for Dispensation.*—In advanced countries where girls are allowed to select their own husbands, or where the evils of early marriage and early consummation are generally recognized by the masses, the necessity for the grant of dispensation in regard to the minimum age for marriage is not so urgent. But even there a provision has been made in many countries for the grant of such dispensation in exceptional and urgent cases. In France, Germany, Hungary, Italy, Belgium, Czecho-Slovakia, Denmark, Finland, Iceland, Japan, Norway, Poland, Roumania, Sweden, Switzerland and other countries, the minimum age of marriage is allowed by law to be relaxed, and dispensation is granted for urgent reasons. Such power is generally vested in a high officer of the State, and the most common reason for dispensation is probably that in which the girl is about to become a mother, and in which a marriage, if permitted, will enable the child to be born legitimate. Humanity is the same all the world over, and what may happen in other countries may, with the spread of individualistic ideas and the growing relaxation of parental control, however regrettable, happen here or there in this country also.

56. The ancient law givers made a due allowance for the frailties of human nature, and recognised the son of a maiden (*Kanina*) as one of the twelve kinds of sons, though of an inferior status. To quote the words of Brihaspati, in the absence of clarified butter oil some times takes its place. It should not, however, be supposed that by such recognition they intended to legalise illicit connection except where it was followed by a subsequent formal marriage, which would help to legitimatise the child. (*Pedda v. Zemindar of Marungapuri*, L. R., I. I. A., 293). Brihaspati and other Smṛiti writers explicitly suggest that where a man has sexual connection with a willing maiden, as happened in the case of Sakuntala, he should, where practicable, lawfully espouse her (Brihaspati, XII, 72; *Manu*, VIII, 366; *Yagnyavalkya*, II, 288). Referring to

marriages in the disapproved form, the Smritis lay down that the performance of the marital rites afterwards before the sacred fire was necessary to validate the connection. (Priyanath Sen's Hindu Jurisprudence, pp. 269 and 270). The masses and the orthodox classes are still largely opposed to any legislation, fixing a minimum age for marriage; and if there is to be any legislation, it should provide for the grant of exemption or dispensation in the interest of the girl or for her future welfare, happiness or safety in exceptional and urgent cases.

57. In the marriage laws, enacted in the Indian States like Baroda, Indore, Rajkot and Mandi, a provision has been made for the grant of license or exemption on previous application, where the parents or guardians are, owing to old age or disease, not likely to live to perform the marriage till the girl attains the prescribed age, and there is no other guardian or relative fit and willing to undertake that responsibility in the event of their death, or where other equally unavoidable difficulty is likely to arise.

58. In the course of our enquiry, we came across a large body of influential opinion, which favoured marriage legislation with a due provision for the grant of exemptions in exceptional and urgent cases; and even some witnesses, both Hindu and Muslim, who were opposed to marriage legislation agreed that that legislation was likely to be more acceptable, if such a provision was made to cover suitable cases. Even among the Roman Catholics the grant of such dispensation by the Ecclesiastical authority is not excluded.

59. I am, therefore, of opinion that in any law fixing a minimum age of marriage, a provision should be made, empowering the District Judge on previous application to grant dispensation or permission for the performance of the marriage before the prescribed age, where the interests of the girl or her future welfare, happiness, or safety urgently require it, and that where he grants such dispensation or permission, he should have power to impose such terms conditions or restrictions with or without security or sureties as to the separate living custody and maintenance of the girl after marriage till she attains the prescribed age, as she may consider expedient or necessary, and also to rescind or vary the same from time to time. I am further of opinion that in order to restrict a frivolous

appeal, no appeal from the order granting or refusing the same should be permitted except with the leave of the District Judge.

*Differentiation in punishment, if wife not dead.*

60. *Punishment in Marital Cases.*—There is another question closely connected with the marital relation, which requires a little consideration. The offence of rape within the marital relation is a creature of Indian Statute. The Hindu or Muslim Law recognized no such offence. By 9 Geo. IV, Cap. 74, certain criminal laws were introduced into the country, but they recognised no such offence within the marital relation. The Indian Law Commissioners prepared a draft of the Indian Penal Code in 1837, section 357 of which contained an exception that sexual intercourse by a man with his own wife was in no case rape. But another Commission, appointed in 1845, to revise that draft, recommended that the early age, at which children were married and were in the eyes of law wives, made it necessary that protection should be given to them by the law till they were of age to reside with their husbands; and they suggested the exclusion from the exception of cases in which the wife was under nine years of age. In 1860, when the Indian Penal Code was enacted, the protection was extended by legislation to girls under ten years of age. The age was subsequently extended to twelve years in 1891 and to thirteen years in 1925.

61. *Distinction between Marital and Non-Marital cases.*—There is, however, a material difference between marital cases and cases outside the marital state, and a substantial difference should, therefore, be made in the punishment for each of these classes of cases. In marital cases no question of consent arises, for the consent is presumed or implied from the fact of the marriage itself; and no question of age arises except for the purpose of providing the outside limitation, upto which the protection of tender girls is to be extended. The protection is absolute, whether the girl is under twelve or over twelve years of age, until the extreme limit of protection is reached. Is there any particular advantage, therefore, in maintaining a distinctive treatment, based on age, for purposes of trial in marital cases, when a simpler and a more feasible method of distinction is available?

62. *Reasons for Distinction.*—Apart from remoter consequences, such as the devitalization of the constitution, nervous prostration, or early decrepitude, for which a single act can hardly be responsible, the injury to a girl, not fully developed, from early cohabitation is generally rupture and hæmorrhage. The latter, if not early checked, may lead to septicaemia or death. A broad distinction between the cases of marital misbehaviour, causing death, and the other cases of marital misbehaviour, not causing death, would, therefore, serve all practical purposes. The former class of cases may be triable, as hitherto, by the Sessions Judge, and made punishable with rigorous imprisonment, which may extend to seven years and fine; and the latter class of cases may be left to be triable by the magistrate and made punishable with imprisonment of either description, which may extend to two years or fine or both. The exact amount of punishment to be awarded in individual cases of each class must be left to the discretion of the trying court, which can take into consideration the consequences of and the circumstances, attending the act, and the ages of the girl and the offending husband in adjusting the sentence.

63. The advantages of this procedure are obvious. In the first place, if the girl is found to be under fifteen years of age, the further necessity of or the difficulty, and uncertainty, connected with the determination of the precise age of the girl for the purpose of ascertaining the forum, would be obviated. If the commission of the offence has resulted in death, the case would be tried by the court of Session or else by the Magistrate, referred to in Section 561 of the Code of Criminal Procedure, which will have to be suitably amended. In the second place, the trial of the latter class of cases, in which death has *not* resulted from the commission of the offence, would be expedited, and the inconvenience and expense to the parties and witnesses would in most of the cases, now triable by the Sessions Judge, be greatly reduced. In the third place, the considerations which apply, where the wife has died in consequence of the commission of the offence, do not apply where the wife is living, whatever be her age. The former class of cases would obviously require sterner treatment to have a lasting and wider deterrent effect. But the latter class of cases would indirectly involve suffering to the wife, irrespective of her age, as her marriage is irrevocable

and the husband has the liberty to discard her and take another wife. The offence should, therefore, be made compoundable with the leave of the court, wherever death has not resulted from the commission of the offence; or else the magistrate may award such punishment within his power, as the circumstances of the case and a consideration of the injury and the ages of the girl and the offending husband may require. Except for remote or indirect consequences, it is difficult to lay down any other line of demarcation between different cases of injuries, not resulting in death, or to determine whether the rupture or hæmorrhage is simple or grievous.

64. In the fourth place, the advantage of extending the application of section 562 of the Code of Criminal Procedure to this class of cases, irrespective of the age of the girl, where the wife is living, is obvious. There is no danger of the court exercising that power except where the ends of justice may require it; and even if that power is abused in the belief that good relations will thereby be restored between the husband and the wife, that abuse would be less intolerable than anything, which would involve lasting suffering to the living wife.

65. A substantial distinction in punishment between marital and non-marital cases is, moreover, insistently demanded by public opinion. To punish a husband for marital misbehaviour, where death has not resulted, with rigorous imprisonment, which may extend to ten years is manifestly monstrous, and must necessarily involve endless suffering to the wife by depriving her for long of the necessary means of protection and livelihood; and while I regret that my colleagues are unable to agree to the suggestion that section 3 of the Whipping Act (Act IV of 1904) may be amended to provide an alternative sentence of whipping in lieu of imprisonment for cases of marital misbehaviour, not ending in death, I am unable to agree that the benefit of the application of section 562 of the Code of Criminal Procedure should be excluded in certain cases by extending the punishment to imprisonment for ten years.

66. It is argued that any reduction in the maximum punishment, where girls under twelve years are concerned, is likely to encourage a belief that the offence is not considered by the legislature to be serious. But this offence is after all a creature of Statute of a kind not known in any

other country; and inasmuch as it interferes with the domestic relations between a man and his wife, the real interests of the wife and the intense injury, likely to be caused to her by the prolonged incarceration of her husband, ought not to be excluded from consideration.

67. In fact, the punishment in most of the cases hitherto tried by the courts, even where the age of the girl has been under twelve years; has varied between imprisonment till the rising of the court and imprisonment for two years; and there is no advantage in keeping in the statute only in a maximum imprisonment for ten years, when so far as is known, no court has administered, even where death has resulted, one fourth of that maximum, thus leading people to think that the legislature is blind to the difference in this respect between a marital and a non-marital offence, and wants to tar them both with the same brush.

68. After all, an intention to cause death or a knowledge that the act is likely to cause death cannot easily be imputed or proved in such cases; and where death has resulted, convictions have been mostly under section 304-A of the Indian Penal Code, that is for death caused by a rash and negligent act, the maximum punishment provided by law for which is imprisonment for only two years. The arm of law is long enough to reach every criminal, but it cannot check stop of all crime.

“ Of all the ills, which human hearts endure  
How small the part, that laws can cause or cure ”.

A punishment extending upto two years or fine or both for cases of marital misbehaviour, not ending in death cannot, whatever be the age of the wife, be therefore regarded as inadequate.

### *Matrimonial Court for Marital Cases.*

69. *Matrimonial Court for Cases of Marital Misbehaviour.*—With the fixation by law of a minimum age of marriage the number of cases of marital misbehaviour is likely to be very few except among persons married before the law comes into force; and it would perhaps be preferable and conform very largely to the public sentiment, if for the trial of such cases a matrimonial court is provided consisting of a Sessions Judge or an Additional or Assist



ant Sessions Judge as President and two Justices of the Peace, appointed under section 22 of the Code of Criminal Procedure from among non-official men or women of position and standing, as co-judges or members.

70 Much of the long period of waiting and delay, associated with the trial of sessions cases, and the existing diffidence to take such cases to the regular courts will be minimised or reduced by requiring such cases to be tried by the matrimonial courts, which will sit only for this kind of work, and in which two non-official men or women acquainted with the sentiments, feelings and usages of the people will be associated as co-judges. The preliminary enquiry, which the magistrate will have to make before sending or committing the case to the matrimonial court, would eliminate all false and doubtful cases, and the objection, now raised to the trial of cases by the Honorary Magistrates without legal training and not always carefully selected, will disappear with the association of a senior and experienced judge in the trial. Such a court should have the powers, now exercised by the Assistant Sessions Judge, and will hardly cost anything extra to the Government. It would obviate the objection to domestic cases going to and being tried by the regular courts, crowded with other work, inspire greater public confidence, and admit of a woman justice of the peace being associated in the trial, where available. In places, where suitable non-officials of the right type and standing are not available, to be appointed as justices of the peace, I would leave such cases to be tried by the existing courts.

### *Recommendations.*

71. *Recommendations.*—My recommendations are:—

- (1) That in any law fixing a minimum age of marriage a provision should be made, empowering the District Judge, on previous application, to grant a dispensation for the performance of the marriage before the prescribed age, where the interests of the girl or her future happiness, welfare or safety urgently require it;
- (2) That where the District Judge grants such dispensation or permission, he should have power to impose such terms, conditions or restrictions with or without security or sureties as to the

separate living, custody and maintenance of the girl after marriage till she attains the prescribed age, as he may consider expedient or necessary, and also to rescind or vary the same from time to time;

- (3) That the order of the District Judge, granting or refusing the permission in such a case, shall not be open to appeal except with the leave of the judge passing the order;
- (4) That a matrimonial court, consisting of a Sessions Judge or an Additional or an Assistant Sessions Judge as president and two Justices of the Peace as members to be appointed for specific terms under section 22 of the Code of Criminal Procedure be constituted for every suitable local area for the trial of all cases of marital misbehaviour, whether triable by the magistrate or the court of Sessions, wherever such a court can be conveniently and fittingly constituted;
- (5) That the maximum punishment for the offence of marital misbehaviour, causing death, be fixed at imprisonment of either description for seven years and fine;
- (6) That the maximum punishment for the offence of marital misbehaviour, not causing death, be fixed at imprisonment of either description for two years or fine or both;
- (7) That the offence of marital misbehaviour not causing death, be made compoundable with the leave of the court.

72. I desire to add that I would have preferred the same age being kept for consent in marital cases as for marriage to obviate harassment or undesirable inquisition into domestic affairs. The rural classes and the orthodox people may for some time feel a difficulty in accepting the minimum age of marriage, recommended by the Committee; but the difficulty will be assuredly greater, if the age is put higher. I have, however, agreed, though not without some hesitation, to the age of marital consent being put a year higher than the minimum age for marriage in view of the fact that the custom of *Gaona*, *Muklawu*, *Anu*

or *Rukhsati*, by which consummation is generally postponed for some time after marriage is still largely prevalent in different parts of the country; and with a suitable provision in the law of marriage for exemption in hard and exceptional cases, the people may find it easier to agree to a higher age for consummation than to a higher age for marriage.

KANHAIYA LAL.

*The 20th June 1929.*

NOTE BY MRS. BRIJ LAL NEHRU.

We have said, in the course of our report, that the age of consent inside marital relations has been ineffective in protecting young girls, inspite of the fact that it has been on the statute book for a very long time. Thirty-eight years working of the law has frustrated the high hopes entertained by its framers and has conclusively shown that it was not "the mighty instrument of reformation" which Mr. Hutchins, one of the members of the Viceroy's Council, expected it to be. We have also given ample reasons to show that there are certain inherent difficulties on account of which it is nearly impossible for this law to be as effective as other penal laws. If any drastic measures are devised to make it effective the harassment caused will be so great, in the present conditions of India, where there is a marked disparity between the legal status of men and women and the latter's condition is so helpless, that the remedy will be worse than the disease itself. In spite of this, we have recommended this law and I have agreed to its retention, because, I believe in its educative value. Even if it is not possible to bring to book many offenders against the law, its being on the statute book will help in creating a mentality which looks upon the early consummation of marriage as an offence. It is doubtful if even this advantage has been fully secured in the past. Our enquiry has shown that great masses of people have been not only unaffected by the law, but have actually remained ignorant of it.

2. The successful administration of this law is difficult because it differs in nature from other penal laws. While they proceed from a point to which the moral sense of the people has already reached, the case of this law is just the reverse. The very fact that early consummation is so widely practised shows that it is not looked upon by the generality of people as anything reprehensible or criminal. The object of this law is to save "female children from immature cohabitation". That object can only be attained fully by raising the moral sense of the people to the level of the law. Law after all is an organic growth and its effectiveness depends on the relationship it bears to the organisation of and practices followed by the particular society it governs. It is therefore clear that whatever chance there is of securing success in the operation of this

law, it lies entirely in the co-operation of the people. One of the principle reasons why it has so far remained a dead letter is, that such co-operation was withheld from it. Perhaps in the past, the circumstances were not favourable for such co-operation. Latterly, however, there has been a change in the attitude of the people towards social reform and they are more prepared now to take advantage of the law. The keen interest taken by the general public in our Committee and their eagerness for legislation forbidding early marriage are sufficient indications of it. We should therefore make special efforts to secure that co-operation and to remove all obstacles which hinder it.

3. Amongst the causes responsible for the failure of this law, I consider that the following three are important and that it should not be difficult to remove them:—

- (1) The punishment has been too severe.
- (2) The interference of the Police in domestic matters is disliked and
- (3) No effort has been made to obtain the co-operation of the people.

It is because the proposals made by the Committee do not, in my opinion, adequately remove these causes, that I am obliged to record a separate note.

4. The first point on which I differ from my colleagues is the question of punishments. The actual punishments recommended by the Committee are ten years' imprisonment and fine when the age of the girl is below twelve, and one year's imprisonment or fine or both when she is over twelve years of age.

5. I regret I am unable to subscribe to these measures which savour more of vindictiveness than of statesmanship. I presume, of course, that the law as it stands, is meant to be enforced and not merely to decorate the shelves of the lawyers. The question of the amount of punishment to be awarded must be settled with reference to the principles of legislation and the requirements of the situation. It should not depend on the personal sympathies and antipathies of the legislator.

6. I hold that the object of punishment is deterrence rather than vindictiveness. Punishment at its best is an evil and according to Bentham is not justifiable except so far only as results from it a greater sum of good. The

trend of modern civilization has been towards constantly lessening the barbarity of punishment. In former days in the East the amputation of a limb was awarded as a punishment for theft, while in England hanging was considered to be a fit punishment for the same offence. Such punishments are now universally regarded as barbarous. Can anybody say that because of that there is more theft now? It is the causes of crime which we should endeavour to remove rather than confine ourselves to punishing the criminal. Criminals in all cases are more or less victims of their circumstances. They are more so in the case of the present law. This is just an instance where in our efforts to strengthen a moral precept by punishment, we should take care to see that the evil of it is not greater than the evil of the offence. I therefore think that equity demands that the punishment of such offenders should not be very severe. And more than equity, expediency demands it. Even with the punishment of transportation for life for this offence, the harrowing tales of injured child wives, related by the members of the Viceroy's Council in 1891, have not become occurrences of the past. The mere fact of providing high punishment will not, therefore, help us. In this case we have to bring into force more "The indirect means of legislation" the object of which is to take precautions to prevent the evil. It is on this principle that we have suggested the taking of separation bonds in cases of marital misbehaviour where section 562 of the I. P. C. is applicable. And while my colleagues think that this section and the consequent taking of bonds will be applicable in very few cases where no serious injuries have occurred.

7. The objections raised against the reduction of punishment are, firstly, that its reduction may lead to a belief among the general public, that the offence is not really as heinous as it was previously considered to be. I do not think that such a fear is justifiable. In fact the Committee has already recommended a reduction of punishment and there is no reason why a further reduction should have that effect. We have suggested a change in the name of the offence from rape to "marital misbehaviour". If names have any significance and convey any meaning at all, this change of name would be sure to have the apprehended effect. The offence had been deliberately put under Section 376 of the I. P. C. and called rape, to show that

the law made no distinction between a husband and a stranger in a case like this. We have after careful consideration recognised that a distinction does exist and have given effect to it by changing the name of the offence, by reducing the punishment and finally by bringing it under the Chapter of the Indian Penal Code dealing with offences against marriage. A further step taken on the same principle cannot produce any undesirable results.

8. The other reason given against it is that, inspite of the punishment being so high on the statute book, past experience shows that the maximum punishment has hardly ever been awarded, and in fact Magistrate have mostly erred on the side of leniency. This I consider to be all the more reason why such absurd punishments should not disfigure our statute book. The work of the magistrate is to interpret the intentions of the legislator. If it is not our intention to inflict such drastic punishments in actual practice, they should not exist on the statute book, lest they mislead the magistrate and bring the law into discredit. If we provide in the law those punishments only which we actually want to inflict, the purpose of the law will be better understood and better served.

9. The great advantage which I expect will accrue from a reduction of punishment is, that the chances of such offences coming to light will be considerably improved. The Committee have said in the report that any palliative by way of reducing punishment will not induce the parents to complain. I, however hold that the reduction of punishment will serve as a powerful inducement for the well-wishers of the couple and for the social reformer to take action. If they are sure that by taking the man to court they will not inflict a serious hardship on the husband and therefore indirectly on his wife and family, they will probably do so without any qualms of conscience. I feel also that the method of differentiation of punishments based upon age is arbitrary and defective. The proportion of one to ten years, when the girl is above or below the age of twelve years, bears no relation to the real gravity of the offence. No doubt a distinction between the ages of twelve and thirteen has been in existence for the last three years. But as we are overhauling the whole law with a view to enforcing all the provisions of it, it is our duty to make sure that the damage done and the alarm caused thereby to society are not greater than the benefits conferred upon it.

I see no reason why precedents—especially those which have proved unsuccessful—should weigh with us so heavily. I am therefore of the opinion that the differentiation on the basis of age is wrong and consider that the basis of injury should be substituted for it. I would therefore allocate the punishments in the following manner:—

- (1) Ordinary cases, where no special features are noticeable, except that the law relating to the age of consent has been violated—no more than a fine—coupled with compulsory separation of the husband and wife, under bonds taken from the guardian to whose custody the party may be entrusted.
- (2) Cases in which serious injury is caused to the girl, or those in which the magistrate is of the opinion that callous disregard to the welfare of the girl has been shown as it is impossible to visualize all such situations, it would be impossible to define them and I would therefore leave the magistrate a discretion to inflict a short term of imprisonment in these “hard cases”. The separation order would of course apply, provided the period of imprisonment awarded is not greater than the period in which the girl attain the permissible age of fifteen.
- (3) Where, however, the girl dies as a result of the breach of this law, I would not object to a considerable enhancement of the period of imprisonment.

10. The second point on which I differ is the recommendation of the Committee that all trials for the breaches of the law of marital misbehaviour should be *in camera*. I am distinctly of the opinion that, barring extraordinary cases in which the discretion of the magistrate may be exercised as usual, all trials for offences against this law should be not only public, but that the giving of wide publicity to the proceedings should be positively encouraged. I am conscious of the fact that I am making this recommendation against the trend of evidence. But the principle on which I take my stand is that this is a kind of offence for which the true remedy is public ridicule and contempt. In this belief I am fortified by the authority of Jeremy Bentham who in speaking of a similar but worse



case, has remarked that " This offence ought, then, be punished by branding it with disgrace. It is commonly the fear of shame which is its cause; it needs a greater shame to repress it".

11. The offenders against this law will not be hardened criminals but ordinary respectable citizens for whom public ridicule and contempt will be a sufficient deterrent. The sense of shame is a powerful device with which to bring about a social change and I suggest that it should be fully utilised for our present purposes. And this cannot be done without giving wide publicity to the proceedings. This procedure will I believe be more efficacious in weaning the people from their evil habits than the holding of trials in camera and quietly sending them to jail for long terms of imprisonment.

12. The third point on which I am obliged to differ from the Committee is in regard to the agency to be employed in the investigation of offences under the marital section of the law of consent. The Committee have suggested no change in the present procedure according to which the investigation is conducted through the agency of the police. The difficulty is that the police is unpopular and the people would not care to introduce them into the intimacies of the household. The evidence tendered before us amply proves the reluctance of the people to use them. It therefore seems necessary to put their minds at ease in this respect. The difficulties of investigation are great and can only be overcome by those who enjoy the confidence of the people. I therefore suggest that the right of complaint and prosecution in intra-marital cases should be reserved for the parents and guardians or other specified relations and for recognised Societies or Associations, who may ask for it and who may be judged responsible enough to be vested with these powers.

13. In order however to provide for cases where no such Association exists, I would let the police take cognisance of them on the report of the parent or guardian concerned, but not on the report of any relation. The right of complaint at present enjoyed by any member of the public in cases in which he is not directly concerned must however be definitely withdrawn.

14. By recognised Societies or Associations I mean Associations registered with their Municipality or District

Board, under rules made by the Local Government in this behalf, as associations whose business it is to detect and prosecute all offenders under the law relating to the Age of Consent. Before they are registered the Municipality or District Board concerned will be required to satisfy itself, that the controllers of the Association are men or women of standing and respectability and are generally trusted by the people of the locality within which they will have the right of prosecution.

15. As the people are generally averse to the use of the police in such matters, and are not ordinarily in a position themselves to carry on long and expensive proceedings in a court of law, an alternative agency has to be provided. And I can conceive of no better means of doing so than by entrusting this responsible work to the trusted men of the locality. Social Reform Associations already exist in some form or other almost in all the towns throughout India and a very fair start can be given to this idea by conferring on them the necessary powers. As these begin to function and to show their success, I feel confident that the idea will catch on and new Associations will come into being and gradually spread into the rural tracts. The progress will undoubtedly be slow but it will be sure and steady. It will however be as fast as, in the circumstances, it is possible to make it. There is after all no royal road to progress. As Professor Jethro Brown puts it, "Impatience to get things done overshoots the mark, when it ignores the importance of securing the co-operation of those for whom, things are to be done".

16. Another advantage that will flow from these Associations is that, being social bodies, they will carry on their work in such a way that the bonds of custom, which are at present holding the people in slavery, will be rapidly loosened and genuine social reform will be accelerated. I would not, for instance, judge them by the number of prosecutions they are able to launch in a year, but also by the number of cases in which they are called upon to use their influence, and by the action taken by them to arouse the public conscience in this respect.

17. One of the advantages which I expect to flow automatically from the activities of these Associations is the ensurance of the success of the Marriage Law. We have seen, in the case of Baroda, that the Marriage Law by

itself has not succeeded in preventing child marriages. People break it every year in thousands and gladly pay the fine levied on them. As no Government can afford to fill jails for the breaches of laws of this kind, the same may be the case in British India, inspite of the imprisonment recommended by us. Besides, if people are not genuinely convinced of the utility of late marriages they will find out a hundred excuses to escape the law. The work of these Associations will help in convincing them of the evils of early marriages and will make them less inclined to evade the law.

18. I have suggested in an earlier paragraph, that the right of complaint at present enjoyed by the members of the public should be definitely withdrawn and given to these Associations instead. Apart from the fact that the ordinary citizen has neither time, energy nor money to undertake these prosecutions, I fear that, unless this is done, sufficient importance or weight will not be acquired by these bodies. The only people who are likely to use this right—which is more a responsibility than a right—are those who are already interested in social reform. There will not be sufficient incentive for them to band themselves together for this purpose and the great psychological and propaganda value of joint and regular action will be lost to the public. This can only be attained by the entrustment of specific and undivided responsibility. For what is every body's business is eventually found to be no body's business at all—witness the paucity of cases brought to light since the Age of Consent law was first passed, as against the number of breaches of it that must have taken place.

19. Unless their responsibility is undivided, I fear also that it will be impossible to connect these Associations with the existing machinery of Government and there would be no meaning in "recognising" them. I attach much importance to this linking up as will be apparent from a subsequent paragraph.

20. A third reason why I suggest the withdrawal of the right of complaint from the public, is to save the people from the harassment which may be caused by the misuse of the law. Such a safeguard is all the more necessary because we have recommended the raising of the Age of Consent to 15 years, and the number of cases in which the

law applies is bound to be much larger than before. We have also recommended to the Government to make the law better known. When that is done and the law is generally known, the opportunities of the black-mailer will correspondingly increase. The fear of being punished for malicious prosecution is not likely to be a sufficient deterrent. The matter concerns the most delicate private affairs of the people which they are reluctant to see brought to light. What the people, who are susceptible to this kind of pressure fear is publicity, and they may not care to risk their own prosecution in order to get the black-mailer punished afterwards.

21. The linking up of the work of the Associations with the existing machinery of the Administration should suggest be done in the following manner. Each Association should be required to produce an annual report by a prescribed date, detailing its activities during the previous year and to submit it to the Municipality or other Local Board with which it is registered. These Boards should then send to the Local Government a consolidated report for all the Associations in their charge. The Local Government will in their turn review the work done within the province as a whole and publish the result for public information.

22. The reports of the Associations and the Local Boards should also be available to the public as soon as possible after they are ready. The publicity value of the reports and reviews can hardly be exaggerated. They will be annual intimations to all the well-wishers of the country of the amount of work that has been done and reminders to them of how much still remains to be done.

23. It will be seen that most of the persons brought into court by these Associations under the scheme suggested above, will on conviction be punished by the levy of a fine. I suggest that the money so realised should be made over to the Association concerned as an aid to its funds which cannot be but meagre.

24. My colleagues have objected to my idea of entrusting this work to recognised Associations on the ground that "there are hardly any Associations in India which function regularly". It is to avoid that very defect, to put them on a sound basis, to secure that permanency for them which goes with the machinery of the Government.

that I want them to be connected with a Government department.

25. Another objection they have raised is that the restriction of the right of complaint would be novel procedure in criminal law. I do not see any reason why we should be so shy of novelty. Everything is new at sometime or other. If the novelty of bringing sexual relations between the lawfully wedded husband and wife under the purview of the criminal law was not sufficient to prevent us from doing so, why should the novelty of the idea of restricting the right of complaint be enough to deter us from taking an action which otherwise may be commendable.

26. The last point on which I wish to offer some remarks is the recommendation of the Committee that registration of marriages be made compulsory and marriage certificates issued free of charge to the public. While I favour the idea of a marriage register, I feel that such registration will necessarily involve the employment of an extensive and numerous staff and that its cost may be a serious burden to the finances of the State. In fact the whole scheme is liable to break on this rock. I therefore think it absolutely necessary that the scheme should be a self-supporting one. The best way to do so, in my view, is to levy a charge for the marriage certificate, which should be as low as possible but sufficiently high to cover the cost of its preparation. I do not support the view that it should be issued free of cost.

27. I would advocate one further step which requires no legislative action, but is calculated to have a tremendous and immediate effect in accelerating the reform we all desire. It is well known that most of the young men who go to the High Schools and Colleges look forward to entering Government Service, though only a percentage of them succeed in doing so. I suggest that this craving may be used as a lever and that Government should consider the desirability of issuing orders that, as far as possible, beyond a certain date, no married man will be recruited to the Superior Services or to the clerical establishments. In order to safeguard vested interests, a fairly long date may have to be given before the change takes place. Exceptions may also have to be made to suit the exigencies of the situation. I feel however that the idea is a feasible one and if accepted the result will be indubitable.

28. The scheme outlined above has been based upon four fundamental principles, namely—

(1) That work of this kind is essentially that of Social Reform and can best be done by non-official bodies. These it is presumed will consist of the leading Social Reformers of the locality. In the towns at any rate, there should be no dearth of them. The example of the towns will spread inevitably into the villages.

(2) That the two chief weapons in carrying on this campaign must be propaganda and slight pressure. The procedure suggested above has been specially devised so that there is room for propaganda, in the form of public and private discussion, at every stage. As the point is important I explain it in greater detail below :

- (a) On the application of the Association for recognition, there will be open discussion in the Municipal or Local Board, as to the respectability of the persons concerned. If the Board happens to consist of a majority of orthodox members and refuses perversely to recognise the respectability of its honoured citizens, the latter will be bound to take the matter before the public, in which case they will be supported by the progressive minority. This will mean more agitation and propaganda.
- (b) When a case is reported and before action is taken on it, it is expected that some members of the Association will visit the families concerned and these visits will give rise to a fair amount of discussion among the neighbours. The higher the reputation of the visitors, the greater will be the moral effect produced, and the wider the circle affected.
- (c) Every trial held in the open court and the publicity suggested to be given to the proceedings will afford another valuable occasion for propaganda, through the press and private and public discussion.
- (d) There is room for public discussion on the publication of the yearly report of the Association, then again when the report of the local authority is made and finally when the Review of the Local Government is published.

If propaganda has ever achieved anything, this much of it, which will inevitably be carried on with regularity, should go a very long way.

(3) That in order to achieve the end, continuous action is necessary. It will not do merely to pass some prohibitory laws and leave them to work out their own destiny, as has unfortunately been done in the past. These laws must actually be administered and therefore must be so devised as to accomplish their purpose with the minimum coercion and harassment to the people and the smallest burden to the State.

(4) That non-official activities should receive the sympathy and active support of the State wherever possible. Unless Central guidance is provided, it will be impossible to co-ordinate the activities of the Associations, or to produce among them the necessary spirit of healthy rivalry; nor will these bodies acquire that prominence in civic life which it is necessary that they should possess. The pressure mentioned in (2) above can come from State action only and it is but right that the combined moral forces of the whole people—acting through the State—should guide and support these scattered bodies who will be engaged on national work of the highest importance.

29. Those who do not share my faith in the fundamental principles on which I have based the above scheme, may consider it to be a tardy and lukewarm method of dealing with the question. My insistence on adopting mild methods is not due to want of realization of the seriousness of the harm caused to the nation by the prevalence of the evil practice of consummating the marriages of immature girls. My heart aches also at the thought of the sufferings of the girl-wives. Our whole report is a plea on behalf of these victims of blind custom and usage. It is because of my deep sympathy for them that I want to try more efficacious means than those which have been tried and found wanting. I have the high support of Bentham in saying that "All that the legislator can do in reference to offences of this kind is, to submit them to some slight punishment in cases of scandalous notoriety. This will be sufficient to give them a taint of illegality, which will excite the popular sanction against them".

30. To those who want quick results and doubt the efficacy of the methods suggested to bring about the desired

result, I would say with Prof: Jethro Brown that " Such effort to bring about social amelioration as is prompted by a community of aspiration and will seem to promise less than could be effected by a complete delegation of power to the capable and intelligent few; but if it achieves less, what it does achieve is of incomparably greater value and of more enduring quality. Such progress is from within men. It implies the gradual emancipation of the human spirit, the slow accumulation of petty gains, which are valuable and enduring because they are sought and won by men for themselves.

31. The fate of men is in their own hands. It is the men and women who can make or mar the destiny of their own country. If they are not ready to work, to put up with the fight against the evil, to spare no pains to achieve the desired reform they cannot get it by passing a thousand laws. It is the actual work of men and women that counts. There is no escape from the inevitable law of Karma.

RAMESHURI NEHRU

*The 20th June 1929.*



## I

*Substitution of Crown Cases for Private Prosecution.*

Before proceeding to give my reasons in respect of restricting the absolute right of the members of the general public to prosecute "marital misbehaviour" cases in courts in respect of girls between 12 and 15, let me make some prefatory remarks to explain my view point about the nature of the offence and the desirability of the means adopted to prevent its occurrence.

2. The Committee has recommended the minimum age for marriage to be 14 years and the minimum age of consent in marital cases to be 15 years. The Committee has pointed out in its report the circumstances and the reasons which constrained it to accept these ages as a compromise. The Committee were fully alive to the desirability of fixing the same age for marriage as for consent. It was not deemed expedient to raise the marriage age to 15 for various reasons detailed forth in the report and the age of consent could not for obvious reasons be less than 15 years.

3. The majority of the witnesses who appeared before the Committee were of opinion that the law fixing the minimum age of marriage was by far more efficacious than the law of consent in preventing early consummation and the Committee have been pleased to accept this view and one of their most important recommendation is the fixation of the minimum age of marriage for girls.

4. The offence of "marital misbehaviour" is secret by its very nature and generally speaking, in the absence of the wife and the relatives co-operating with the prosecution, it will be difficult of proof. Marriage in most cases will be an admitted fact but the age and the particular act complained of will ordinarily speaking be required to be proved strictly.

5. It is true that in cases of maternity and proved pregnancy below a particular age the act will perhaps not be denied or, taken along with other circumstances, will be presumed. But it may be surmised there will not be many cases of this nature. The reason assigned by most of the witnesses and accepted by the Committee for many cases

not coming to courts is the reluctance of the wife and the relations to complain against the offender and appear as witnesses against him. This conduct of the wife and the relatives of the husband, at whose house this offence is more likely to be committed, as well as that of the relatives of the wife is quite natural and understandable. The parents and other relatives of the husband and wife celebrate marriage deliberately at an immature age and they cannot be expected to undo what they have done their best to bring about. In fact any one not conversant with the ordinary notions of Indian parents will fail to understand how the parents look forward with great hope to the day when their grandson shall be born in the family.

6. Looked at from the point of view of the wife—her mentality, traditions and environments and surroundings—it will be an inexplicable wonder if one were to expect her to appear as a witness against the husband.

7. In this country, the wife looks upon her husband as her second god on earth and from her very birth she is brought to regard him as such. The teachings of the religion under which she is brought up holds out that her worship of her lord is the worship that would appease God. In this country, where women offered themselves as willing sacrifices and burnt themselves on the funeral pyres of their husbands, it is too much to expect that they would complain against their husbands. If by religion and tradition, inherited through successive ages, her whole mentality is permeated with love, worship and sacrifice for her husband, her temporal situation, and her economic dependence upon the husband, leave her absolutely no chance of enjoying any the least sort of independence. Truly did Sita say—

मितं ददाति हि पिता मितं भ्राता मितं सुतः ।

अमितस्व तु दातारं भर्तारं का न पूतयेत् ॥

“ The father, brother and the son give in a measure who will not worship the husband who gives unmeasurably.”

8. Moreover, the young age of the wife, her being surrounded by the relatives of the husband, the general belief that the husband has an absolute right to such intercourse preclude the possibility of her being a free or independent agent. More often than not, her parents and guardian

live at a great distance from her husband's home and besides the traditional and natural reluctance of her relations to interfere in her domestic concerns—as a direct corollary to the conception of her being gifted away at the time of marriage to the husband—constitutes a sufficient reason that such cases will not come to light and will not be successful in courts. It is in view of these circumstances that witnesses have opined that the law has been a dead letter and is bound to remain a dead letter (though its preventive and educative effect is not denied) if the right of complaint is exclusively given to girls and their relations.

9. There is however a more cogent reason why the witnesses have fought shy of the law. I wholeheartedly agree with witnesses when they say that the real usefulness of the law consists much more in fear of its being used than in actual use.

10. A marital misbehaviour case is a misfortune, whether it is successful or otherwise. If successful, it hits her most in whose interests the law is being enacted and the case is brought. If unsuccessful, it fails to accomplish the object though it will have done great mischief in either estranging the husband and wife and their relations or in disgracing the family and in the wholesale spread of perjury and fabrication of evidence. Thus is doubly cursed.

11. Let the reader visualise in his imagination the condition of a devoted and pious girl-wife of 15½, pregnant with a child and expecting delivery, while the husband is being hauled up for misbehaviour with the prospect of being sent to jail. Where is a girl who will not be tempted in such circumstances to have recourse to miscarriage to conceal the evidence of her person? What girl would not prefer suicide to save her lord from the consequences of an act which is supposed to have injured her and in which she participated as a result of the concurrence of the parents of the couple in uniting them before holy fire into indissoluble communion? It is said that the condition of a mother in her pregnant state affects the whole tenor of the future life of the child. If it is true, the reader has to draw on his own imagination to divine how the unfortunate child of such union, the result of which is the incarceration of the father in jail with the mother brooding during her pregnancy over her misfortune and cursing herself and the offspring for it, will be affected.

12. What one would expect in the ordinary wife is clear. The period of the stay of the husband in jail will be a period of great torture to the girl-wife at home. If the husband is fined, the fine shall come out of the share of her bread and the milk of her young babe. Day in and day out, the mother-in-law and other relations will curse the young lady for having brought trouble on the family. This inauspicious lady will hardly find comfort at her father's. But the death of the husband in jail opens a chapter which few hard hearted people will be able to read with equanimity.

13. No fatalism will heal the wound of the over burning widow and the fact that she herself was the efficient cause of it will stick into her heart like a poisoned arrow. The case of a widow not allowed by custom to remarry can better be imagined than described. That the above is not an imaginary picture can be substantiated by the evidence of the witnesses who appeared before the Committee.

14. Thus, it is clear that prevention of early consumption, which is no essential in the interests of the nation and humanity at large, is not likely to be either successful or unattended with a great amount of misery and disaster if the law of consent is allowed to be rigidly enforced. I do not wish to conceal that I look forward to a most rigid enforcement of the law of marriage as a desideratum and an efficacious remedy for the future, but I am definitely of opinion that, what to speak of a rigid administration, even an unsympathetic administration of consent law, is bound to create great dissatisfaction and disaster in the country, the more so, if private prosecutions are not, substituted by crown cases.

15. It has been argued that individual cases of hardship should not influence us in the broad consideration of the question in view of the national interests involved. The argument is that examples of conviction would serve as deterrent and though one individual or family shall suffer, hundreds or thousands will derive a lesson. I am afraid, this argument is too far fetched. It is not denied that these examples will have some effect, but the claim that they will have a far reaching effect seems to be unfounded. In the first place, the results of such convictions are not likely to be broad-casted and in this country, where illiteracy is so rampant, the percentage of the people com-

ing to know of it will be quite insignificant. Moreover, the offence is committed in the secrecy of the bed chamber and the chances of detection are very few. Those who indulge in this offence are either indiscreet young lads who are not likely to come to know of convictions in courts, or full grown widowers whose impatience will certainly not be curbed when they know that the girl is helpless and in their clutches.

16. In fact, this offence of 'marital misbehaviour' is so elusive that it can be confidently said that its prevention is certainly better than cure. All efforts therefore should be concentrated on the ways and means of prevention rather than punishing them who are guilty. When husband and wife are closeted together by their relations, or are allowed to come together, the chances are that the offence will be committed and no heed will be paid to convictions in courts. You may as well ask the fire not to burn and air not to dry than expect that crime will not be committed, under these circumstances. Human nature cannot be taught asceticism by legislation or conviction. I therefore think that it ought not to be the policy of the law to seek to trace every infraction of the consent law and bring it to courts and for this purpose it ought not to authorise private complaints by all and sundry. The complaint of 'marital misbehaviour' is very easy to make and very difficult to substantiate so far as strangers are concerned. A stranger cannot be expected to know how things have fared with a girl after she has passed the threshold of the house into its privacy. Even relations are not expected to know what has passed in the bedchamber. Moreover, the birth registers not being very reliable, it is idle to expect even from well-meaning strangers any exact knowledge of the age of the girl. In marital misbehaviour cases, two points will be crucial, *viz.*, age and the act. In respect of these two, no stranger can be expected to possess accurate knowledge. All will be a matter of surmise and hearsay knowledge.

17. Thus from the nature of the allegations made in a complaint based presumably, as they always will be, on hearsay surmises and conjectures it will be most difficult to prove that the complainant was actuated by malicious motives. It has been held that rashness in sifting information furnishes no basis for holding malice proved (4 P. R., 1897). In cases attracting the provision of Section 250, Cr. P. C., it has to be distinctly proved that the case

was false to the knowledge of the complainant and frivolous or vexatious to boot. It should be remembered that the onus is shifted and in the absence of positive proof that the case was false and frivolous or vexatious, no court would be in a position to award compensation. The Section 211, I. P. C., reads as follows:—

“Whoever, with intent to cause injury to any person, institutes, or causes to be instituted, any criminal proceeding against that person or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person shall be punished, etc., etc.”

18. Similarly Section 182 requires that information given to a public servant must have been known or believed to be false and with the intention or knowledge that such act will cause the public servant to act to the injury or annoyance of that person.

19. To put the point vividly let me quote from 29 P. R., 1894, Justice Plowden says:—

“Unless the person making a charge actually knows that there is no just or lawful ground for it he is not guilty of the offence and cannot properly be convicted of it. It is not enough to find that he has acted in bad faith, that is, without due care and inquiry or that he has acted maliciously or that he had no sufficient reason to believe or did not believe the charge to be true. The actual falsity of the charge, recklessness in acting upon information without testing it or scrutinising its sources, actual malice towards person charged, these are all relevant and more or less cogent but the ultimate conclusion must be in order to satisfy the definition of the offence that the accused knew that there was no just or lawful grounds for proceeding. It may be difficult to prove this knowledge but however difficult it may be, it must be proved or unless it is proved, the informer must be acquitted.”

20. Thus I am led to the conclusion that in this particular offence of ‘marital misbehaviour’, looking to the

very genesis of every complaint underlying allegations made upon heresay information and conjecture, it will be most difficult if not impossible, to bring home the offences of Sections 182 and 211 to the informers, and thus the bulwork of the unfettered right of every members of the public loses ground underneath its foundations.

21. And when I contemplate the conditions of the society, a knowledge of which I claim to possess, being a legal practioner of about 20 years standing, I have no hesitation in saying that the argument that our experience of the past encourages us in the belief that these provisions will not be abused and that the good sense of the people will prevail does not carry conviction with me.

22. The reason why this right has not been abused so far may be to a certain extent due to the innate sense of neighbourly restraint in exposing another. There are good and chivalrous people who will not like to strike below the belt, but human nature shall have to undergo radical change if we are to expect that with due publicity being given to the fact that it is within the hollow of the hand of every person to drag his enemies, and the highest and the lowest in the land, to court on the basis of a complaint of this nature, in which the complainant is practically immune from the consequences of failure to prove his case, a crop of false and vexatious cases does not rise up. The complainant while burning with hideous revenge and desire to inflict injury on an enemy will masquerade as a well wisher and a philanthropist. In many cases, blackmailing will be resorted to, as it will be in the power of the complainant to make or mar.

23. The abuse of private person prosecuting such cases and the utter undesirability of arming private citizens with an engine of this description has led the Legislature to abolish the law of sanctions contained in Section 195 of the old Criminal Procedure Code.

24. The complainant possesses some distinct rights and privileges under the provisions of the Criminal Procedure Code and to allow an enemy or a stranger the use or abuse of such provision is against public policy. Such cases should be crown cases in which the crown may be trusted to prosecute fairly and private interested persons should not be allowed to prosecute in a manner best suited to wreak their vengeance. Authorities need not be quoted for a

proposition so obvious and the fact of the Law of sanctions granted to private individuals being abolished may alone serve to illustrate the validity of the argument. I am therefore very much opposed to private persons being charged or empowered to prosecute 'marital misbehaviour' cases and would like to substitute private complaints by Crown cases.

25. It will be useful to dispose of another argument at this stage. It is argued that in regard to all offences affecting the human body, the policy of law has been to leave unfettered the right of complaint to inhere in every member of the public. On the other hand it has been as strenuously argued that in all offences of a private and domestic nature, in which primarily the individual affected is most concerned, the law has restricted the right of complaint only to the aggrieved persons. As an example of this, reference is made to all sections of Chapter XX of the Indian Penal Code, in which category the Committee have recommended to place this offence and to the provisions of Sections 195 to 199 of the Criminal Procedure Code. No doubt, in Section 195 public servants concerned or courts concerned, and under Sections 196 and 197 the state which is specially concerned, and in 198 the persons specially aggrieved by offences of a personal character, as are contained in Chapter XXIX (Contract of service) Chapter XXI (Defamation) and offences relating to marriage, as contained in Sections 493 to 496 are exclusively given the right of complaint, and Section 199 also restricts the right of complaint to aggrieved persons in respect of offences under Sections 497 and 498 I. P. C.

26. To solve the problem, it is desirable to clearly understand the basis of this offence as well as that of the cognate offences under enquiry. This offence of 'marital misbehaviour' found place in Section 375 I. P. C. and has been regarded as an offence against human body. It is clear, that in the eye of the law, judging from punishment, the heinousness of the crime by a husband, when the girl is below 12 has been regarded no less than when the offender is a stranger. The only difference made so far as the year 1925 since the amendment of the law in 1891 was that the offence was not cognizable in the case of husbands. The amendment of the law in 1925 prescribed comparatively a lighter sentence if the girl was over 12 and below 13 and made the offence triable by a District Magistrate or a



Chief Presidency Magistrate. The husband's right to have an absolute enjoyment and possession of the person of the wife has been questioned by the Committee, though such claim is countenanced by religious beliefs and ordinary notions of married life. While disputing such a right it is clear that the provision of a very light punishment of one year, the concession of compounding being allowed with the sanction of the court, the offences being non-cognisable and bailable, and the elevation of the offence from its place in Section 375 into the chapter relating to offences against marriage, all clearly indicate that the fact that the husband is the offender and the future life of the wife is indissolubly bound up and woven, warp and woof, with that of the husband, cannot be ignored, in coming to a conclusion, if the right of complaint in the public should remain unfettered.

27. In extra-marital cases, when the age of the girl is between 16 and 18 and she is a consenting party the offence is really not against human body but against undeveloped mind. In intra-marital cases, when the age of the girl is below 12, though the fact of the offender being a husband cannot be ignored, yet the real gravamen of the charge is injury. In 'marital misbehaviour' cases, when the age of the girl is between 12 and 15, it is a mixed question of injury and marital right and one aspect need not be too much emphasized at the expense of the other. A girl below 12 hardly realises what marriage and its implications are, but a girl of 15 is only a bit less than a woman and according to Hindu and Muslim religions, the age of the majority of a girl is 15 or near about. Thus, in my humble opinion, we cannot regard the offence of 'marital misbehaviour' when the age of the girl is between 12 and 15 from the pure unadulterated basis of injury or of marital right.

28. From the practical point of view, leaving aside legal theories, I am conscious that no offence will come to light if the right is restricted to the girl and her relations for reasons already indicated; I am also conscious that if the age of consent law has to become effective as a preventive or educative measure, the fear and liability of its being used by persons other than the relations of the wife and the wife should exist clearly and distinctly. I am therefore definitely of opinion that the right should not be restricted to the girl or her relations, as it is, the clear duty and concern of the State to stop early consummation resulting in

the deterioration of the race and the physical ruin of the girl concerned. I am further of opinion that private persons as such should not have the unfettered right of complaint on legal and practical grounds and a *viâ media* or a safeguard against abuse of an absolute right is necessary to be found out.

29. I have already discussed that the alternative of sanctions in favour of private persons stands discredited to-day. We are thus left to two alternatives—

- (1) Preliminary enquiry to be made obligatory in all cases and the right of every member of the public to remain absolute as at present.
- (2) Private prosecution to cease and the crown to prosecute offenders after enquiry into the circumstances by any court or officer appointed for the purpose, on the complaint or report of private individuals, but the Police not to interfere and the inquiring court or officer to initiate prosecution on lines analogous to those referred to in Section 476 of Criminal Procedure Code. I may at once say that I prefer the second alternative. The powers of proceedings under Section 202 Criminal Procedure Code are already possessed by courts and this suggestion wants to make such enquiry obligatory in every case. I do not consider that such an obligation is absolutely necessary or will remove the objectionable features of a private prosecution for, per chance, ulterior motives and ends.

30. In this connection, the question of meeting expenditure of the prosecution is also very relevant. A private rich complainant may seek to override his case beyond the limits of fair prosecution and a poor complainant may be handicapped by his poverty in even doing the needful. There is no reason why the national exchequer should not stand these expenses to stop this national evil and equalise and regulate the chances of conviction for the poor and rich alike. A dishonest complainant may collude with the accused, conspire with him in the fabrication of consciously false evidence, whose falsity may be subsequently demonstrated, get a case transferred from a satisfactory court and do a hundred other things to put obstacles in the way of justice, or he may begin to play the tactics of a persecutor

harassing the accused unnecessarily. It is, to say the least, most impolitic to give free scope to private caprice in this matter.

31. The second method is free from all these defects. After a proper enquiry the calendar of witnesses will be put before the Magistrate by the officer or court authorised to enquire and the case shall proceed on as a Crown case, prosecuted as fairly as the circumstances of the case warrant. It would cost no tears to the public prosecutor if the court in its discretion allows the case to be compounded. No improper harassing of the accused will be possible, neither unduly or dishonestly favouring the accused. Such a system will, while securing that proper cases with a reasonable chance of conviction come to courts, effectually checkmate frivolous, false or vexatious complaints. There are very hard cases. There are doubtful cases. There are cases in which it is not discreet to proceed in the public interest. In such cases, the officer or court concerned will exercise his discretion. In cases in which the wife does not support the prosecution and there is no other independent evidence to bring the offence home to the accused, the court or officer concerned will exercise the wise discretion of not bringing it to court. The private prosecutor will in such cases like to take chances and, even if he fails in the end, he will utilise such opportunity to harass the husband, the girl and their relations. The discretion of the court or officer can be provided to be controlled as at present by provisions of Sections 476A and 476B of the Criminal Procedure Code. The prosecution by the Crown will have the further merit of not accentuating animosity and breeding ill-will between the complainant and the accused, whereas private complaint, even if well meant, is sure to engender ill-will and enmity.

32. It has been pointed out that as Section 561 enacts that only the District Magistrate or Chief Presidency Magistrate will take cognizance of the offence and no Police Officer below the rank of an Inspector shall be employed to engage or take part in the investigation of such offences, no further safeguard is necessary.

33. It need hardly be said that the objection does not really touch the point at all. The presiding Judge, whether he is a District Magistrate or Chief Presidency Magistrate, is only a 1st Class Magistrate. He may be

expected to judge the case better than inferior Magistrates but his powers of control over the complainant, the prosecution of the case, advancing of evidence, getting transfer of the case from his own court, are only co-extensive with the powers of all other courts.

In regard to his efficiency to remove the objectionable features of a private prosecution, he will be neither better nor worse than any other Magistrate. Thus the qualifications of the presiding judge of the Court are not very relevant in the consideration of the objections to private prosecution being competent in cases of this class. I am further of opinion that in view of the expected increase in the number of cases, simple issues involved and Indian personnel of the magistracy, an amendment of Section 561 is necessary and substitution of a 1st Class Magistrate with seven years' experience, especially empowered in this behalf, for the District Magistrate or the Chief Presidency Magistrate, is called for.

34. I do not think this aspect of the case, *viz.*, substitution of the public agency for prosecution in the place of a private prosecution was ever before considered at any time when the legislation for raising the Age of Consent was undertaken. To my mind, such substitution is absolutely necessary in public interest, specially in cases in which free private prosecution is as harmful and disastrous as restricting prosecution to merely aggrieved persons not in a position to prosecute. The suggestion involved in the recommendation of substitution of Crown for private prosecution has been supported by many witnesses before the Committee. In a way, all the witnesses who advocated restriction of the right of complaint to aggrieved persons have expressed the fear that the law will be abused. They have thus indirectly lent their support.

Among witnesses who expressly support such substitution, reference may be made to the evidence of Mr. M. R. Jayakar, M.L.A., Bar-at-Law, Deputy leader of the Nationalist party in the Assembly. In reply to question, "Who should have the power of making complaints", he was pleased to say, "I understand that two suggestions have been made. I have been discussing with Mrs. Nehru whether you should give exclusively the power of complaint to the parents or to Reform Associations. I would suggest that the power should be given to everybody. The Social Reform Association will come in of course; but I would

suggest that I would have an officer something like the Director of Public Prosecutions to whom all the information should be submitted and who will examine the information; and every prosecution will be, after he has looked into the case and if he thinks that the prosecution should be started. He gives the information to Government and the State undertakes the prosecutions after his certificate that it is a fit case for trial. The Director of Public Prosecutions should be selected from any class of people who must not have the criminal mentality. I should prefer that he should be a member of the Bar, not ordinarily concerned with the advocacy of a criminal character". Thus I deduce the following conclusions (1) that the law of consent cannot be very effective in preventing early consummation, (2) that such cases will be difficult to prove without the co-operation of the wife and relations, which usually will not be forthcoming, (3) that if the right of complaint is restricted to wife and relations, very few cases will come to court, (4) that in the interest of the wife, the law should not be very strictly enforced and no undue attempt be made to pursue the offenders, (5) that on grounds of public policy, hard, doubtful or such cases in which reasonable chances of conviction do not exist, should not come to courts, (6) that past experience that this right of unfettered complaint was not abused is no guarantee for its proper use by the public in future, as it is admitted that the law was not known, (7) that the safeguards of Sections 250, Criminal Procedure Code, and 211 and 182, Indian Penal Code, are, from their very nature, insufficient to deter enemies and evil-minded persons from launching frivolous and vexatious prosecutions, (8) that on grounds of public policy, such a right should not be conceded to private individuals as the law of sanctions has been abrogated by the recent amendment of the Criminal Procedure Code, (9) that in offences of such a private and domestic nature the public should not be allowed to freely interfere, (10) that it is clear from the report of the Committee, that the evil of early consummation is far too prevalent to be conscientiously ignored and that the State owes a duty towards the people to stop it at any cost and that liability and fear of being hauled up are sure to act as great deterrents to law-abiding citizens, (11) that the prosecution of proper cases by the Crown is far more preferable on grounds of public policy to private prosecutions and that the Government

treasury should bear the expense of such prosecution, (12) that a preventive provision of the law will be more suitable and effective than a punitive measure for which a separate note is being submitted. As a result of these conclusions, I recommend that the law should provide that the right of bringing a complaint should not be restricted to the girl and her relations. Such of them as can be considered aggrieved should have absolute rights to proceed by ordinary complaint. I further recommend that provision should be made for enquiry by a Magistrate or Officer appointed for the purpose before a complaint is lodged before a court of law and the Crown should take up the prosecution and the private individual should subsequently figure only as a witness, if necessary, as in a Police Chalan. The discretion of the enquiring Magistrate or Officer bringing proper and suitable cases to court should be provided to be controlled by provisions analogous to Sections 476A and 476B of the Criminal Procedure Code.

It is unnecessary to say that the offence should not be made cognisable by Police on any account.

## II

### *Preventive Section.*

35. If ever the adage 'Prevention is better than cure' applied to any disease with unsurpassed appositeness it is to the national disease of early consummation.

36. In fact, in regard to this disease, some people think that it is anomalous to speak of cure and that the age of consent law also will be more effective as a preventive and educative measure than as a punitive one. There will be many cases in which the law will have to be invoked in its full rigour without any chicken-hearted regard to consequences and I have no doubt that the application of merely preventive remedy in such cases would be unjustifiable.

37. It is well said that Bible is no part of the Penal Code. A merely preventive remedy can at best supplement the substantive law. It can in no way be a substitute for it. In fact, such a preventive provision is sustained and justified by the substantive law.

38. In this view, it would appear that the suggested preventive provision does in no way disparage the substantive law but is in the nature of its auxiliary and helpmate

39. Judging from the fact that bonds have been provided to be taken on conviction of breach of marriage and consent laws, the suggested preventive remedy of separation by taking bonds without any conviction when commission of the offence of marital misbehaviour is likely, appears to be a necessary counterpart of the whole scheme. The recommendation of putting an embargo on suits for custody or restitution of conjugal rights in respect of girls below 15 is another phase of the same phenomena.

40. Before expatiating on the merits of this suggestion let me deal with the main objection against it. It is contended that the administration of this provision will be impracticable and cause too much interference with the people. I must concede that there is force in this objection. It is quite true that prevention by way of separation will involve interference with the liberty of the parties concerned. It is also true that in some cases separation orders, including as they may, award of maintenance, will cause hardship. But I have yet to know of a penal provision in which interference with liberty or hardship are absent. It is really to cause interference that the penal provision is enacted. Moreover, my contention is that interference and hardship involved in such orders will be very much less in proportion to that involved in prosecution and punishment. Both are evils no doubt and both must be avoided but I claim that the preventive remedy is more effective and less harsh. If the bonds, which are nothing if not separation orders in essence, can be made effective on conviction, I do not see any insuperable difficulty why they will be the less effective only when conviction and prosecution are absent. While dealing with the question of the unfettered right of the public to make complaints, I have given at some length reasons why I consider the strict enforcement and wholesale prosecution under the consent law to be impracticable and inexpedient and I do not propose to repeat them. I may however add some more.

41. The suggestion of a preventive remedy is not a novel one. It is an accepted principle of jurisprudence that what the law punishes as an offence it strives to prevent. It may be conceded that the enactment of provisions too much restrictive of human liberty for avoidance of all kinds of offences is not justifiable and law must take into account innate goodness of human nature and the moral urge in man. But provisions for prevention of offences

which vitally affect the public, and private persons, which cause irreparable injury and specially those in which the remedy may prove worse than the disease are to be found on the statute book of every country.

42. Sections 107 to 110 and 133 to 147 of the Criminal Procedure Code are instances in point.

43. Moreover the offence of marital misbehaviour is very elusive. It is very difficult to get at it and as already elaborated in a previous note, it is most difficult of proof. In the absence of the wife giving evidence circumstantial evidence, *e.g.*, performance of the *Garbhadhan*, *Muklawa*, *Gaona* ceremonies, commensality, living together, specially when no other person lives with the couple and other circumstances are evidence of more or less cogent nature to prove that commission of the offence is likely. In many cases courts will only be justified from the evidence in coming to a conclusion that the particular act is not proved but it is likely that it was committed. The courts will have no option but to discharge or acquit the accused and but for a preventive provision of this nature, law will be powerless and justice will be baulked of its dues. Besides, in the peculiar circumstances of India where illiteracy is so rampant and some witnesses, notably the Additional Judicial Commissioner of Sind, have gone to the length of saying that some people do not know their own age as well as the ages of their daughters, where age-long custom and centuries-old habits have regulated the course of conduct of a considerable number of people in such a way that they have lost all consciousness of the moral delinquency involved in the evil of early consummation, it is idle to expect social propaganda or even an ill advised strict enforcement of a good and necessary consent law to effect wonders. In fact, when there is no sensibility in some cases of even a dereliction from the straight path what to speak of the sense of guilt or mens rea involved in consummation soon after puberty? It is a misnomer in such cases to call the physical act by the dignified name of an offence. Whoever may be responsible for such appalling ignorance and ignoble conditions and I do not hesitate to say that the Government has failed in its primary and imperative duty of educating the people the fact remains that under these circumstances, punitive remedy is as unmerited as impracticable and a more effective and less drastic remedy is called for. Education and propaganda are good in their own



turn. But the remedy which will tell and arouse public imagination is the remedy of effecting separation when it is proved that the commission of the offence is likely.

44. A prosecution and a likely conviction will no doubt excite fear and alienate sympathies and generally speaking people will side with the accused. An infructuous prosecution, however, will demonstrate its futility and impotence of the law to punish the delinquent. A separation order however, unattended with any punishment will ingratiate itself into the good graces of the people, will appeal to them as a soothing medicine and public sympathy will be aroused in its favour. People will begin to realise that there is something inherently wrong in their practice which the law sympathetically wishes to remedy.

45. Such a separation order will be unattended with any great amount of social obloquy and disgrace. It therefore follows that evil-minded persons and enemies will not busy themselves in trumping up false cases.

46. The case will be much easier of proof than a prosecution of marital misbehaviour case. In fact, in the growing consciousness of the people, in the fillip to public opinion given by administering this light and effective remedy, it is not too much to expect that people will in many cases agree to effect such separations as soon as they come to court. As this provision of law will only deal with apprehensions of the commission of offences and not with offences, confession of judgment will not partake of any unsavoury implication and law will effect the purpose in view very readily and expeditiously without any harmful results accruing.

47. The wife will not be a necessary witness and she will not ordinarily have to pass through an ordeal where truth and allegiance to husband will be brought in conflict. No estrangement between husband and wife will result nor any between the relations as none of them is directly responsible for the consequences and the hidden hand of law, whose utility and sympathy they will fully appreciate and in later life bless, will be held responsible.

48. A bond in such cases will only insist that arrangements to the satisfaction of the court be made by the parties arraigned against, *viz.*, husband or if he is a minor his guardians as a result of which union between the couple may be prevented and the offence, if any, has taken place

before, be not repeated till the time the girl attains the statutory age of consent.

49. The parents of the wife, her other relations and the relations of the husband will in practice not find great difficulty in making such arrangements.

50. When marriages will not be performed before the girl is 14 in pursuance of the marriage law, it is clear, recourse to this preventive remedy will become quite rare. This remedy is specially useful for cases in which marriage has taken place at an early age.

51. The Committee have been pleased to recommend that suitable aid and encouragement be given by Government to institutions for protection of girls. In the case of absence of relations and public spirited people willing to take charge of separated girls, and specially when the accused is unable to make satisfactory arrangements, advantage should be taken of rescue homes and orphanages which exist in some places in the country.

52. In view of all these circumstances I make hold to say that the energy of the legislature will reap better fruits by supplementing the age of consent law by a preventive provision than by implementing the age of consent law alone. I therefore recommend that a new provision of law be enacted empowering courts to take action on credible information that the commission of the offence of marital misbehaviour is likely against those alleged to be responsible for it and after an enquiry analogous to the one mentioned in Section 117, Criminal Procedure Code, order the separation of a girl wife under 15 from the husband till the prescribed age of consent by taking bonds from the husband, or if he is a minor from the guardians, in the same manner and on the same conditions on which bonds on conviction have been recommended by the Committee.

### III

#### *Punishment in Marital Misbehaviour Cases.*

53. I do not agree with the recommendation of the Committee that the maximum punishment in marital misbehaviour cases when the age of the girl offended against is between 12 and 15 should be one year's imprisonment.

54. While the bill of 1925 was under discussion in the Assembly, an amendment to the effect that the maximum

amount of imprisonment awardable to an offender, when the age of the girl was above 12 years should not exceed six months was rejected and the then Home Member remarked, that the proposed punishment was "ludicrously inadequate" and he further went on to say "It was much better to reject the bill altogether than to make the punishment a farce". The present recommendation is for one year only. I have no hesitation in saying that the punishment proposed is quite inadequate and errs on the side of excessive leniency and will thus fail to achieve the object it is desired to secure. If this punishment was proposed when the offence was committed on a girl of not less than 14 years, there could be some justification for it, for after the lapse of a year the husband and the wife become legally competent to do what they liked and in most cases, girls would have attained puberty before that age and the injury consequently could not be very great. Now puberty, generally speaking, can be said to come on between 12 and 14. Sometimes it comes still later. It rarely comes on before 12. Thus when the offence will be committed in relation to girls below the age of complete 14, it will be no less heinous than pre-puberty consummation condemned by all religious and abhorred by the society in general. I cannot see my way to accept one year's imprisonment for a serious offence like this.

55. Moreover, this law of the age of consent is sought to be justified on the plea of protection of girls from premature cohabitation. If a man of 40 or 35 has intercourse with a girl 12 years and 6 months old, the consequences may perhaps be fatal or extremely serious, so as to paralyse the girl or wreck her whole physical frame and render her unfit for the rest of her life. Can anybody contend that the marital right of a husband, the undoubted absoluteness of which has been challenged by the Committee, can have such precedence as to override the natural consideration of health and injury to the girl-wife and one year's imprisonment should be regarded as adequate punishment?

56. Besides, this law is desired to have preventive and deterrent effect to hang as a sword of Democles, as it were. A blunted sword exercises no fear specially where the chances of its falling are also so remote. Moreover, farcical and light punishments have a bad psychological effect upon the public mind. The gravity of the offence is minimised, its heinousness loses its enormity and social

before, be not repeated till the time the girl attains the statutory age of consent.

49. The parents of the wife, her other relations and the relations of the husband will in practice not find great difficulty in making such arrangements.

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52. In view of all these circumstances I make hold to say that the energy of the legislature will reap better fruits by supplementing the age of consent law by a preventive provision than by implementing the age of consent law alone. I therefore recommend that a new provision of law be enacted empowering courts to take action on credible information that the commission of the offence of marital misbehaviour is likely against those alleged to be responsible for it and after an enquiry analogous to the one mentioned in Section 117, Criminal Procedure Code, order the separation of a girl wife under 15 from the husband till the prescribed age of consent by taking bonds from the husband, or if he is a minor from the guardians, in the same manner and on the same conditions on which bonds on conviction have been recommended by the Committee.

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53. I do not agree with the recommendation of the Committee that the maximum punishment in marital misbehaviour cases when the age of the girl offended against is between 12 and 15 should be one year's imprisonment.

54. While the bill of 1925 was under discussion in the assembly, an amendment to the effect that the maximum

amount of imprisonment awardable to an offender, when the age of the girl was above 12 years should not exceed six months was rejected and the then Home Member remarked, that the proposed punishment was "ludicrously inadequate" and he further went on to say "It was much better to reject the bill altogether than to make the punishment a farce". The present recommendation is for one year only. I have no hesitation in saying that the punishment proposed is quite inadequate and errs on the side of excessive leniency and will thus fail to achieve the object it is desired to secure. If this punishment was proposed when the offence was committed on a girl of not less than 14 years, there could be some justification for it, for after the lapse of a year the husband and the wife become legally competent to do what they liked and in most cases, girls would have attained puberty before that age and the injury consequently could not be very great. Now puberty, generally speaking, can be said to come on between 12 and 14. Sometimes it comes still later. It rarely comes on before 12. Thus when the offence will be committed in relation to girls below the age of complete 14, it will be no less heinous than pre-puberty consummation condemned by all religious and abhorred by the society in general. I cannot see my way to accept one year's imprisonment for a serious offence like this.

55. Moreover, this law of the age of consent is sought to be justified on the plea of protection of girls from premature cohabitation. If a man of 40 or 35 has intercourse with a girl 12 years and 6 months old, the consequences may perhaps be fatal or extremely serious, so as to paralyse the girl or wreck her whole physical frame and render her unfit for the rest of her life. Can anybody contend that the marital right of a husband, the undoubted absoluteness of which has been challenged by the Committee, can have such precedence as to override the natural consideration of health and injury to the girl-wife and one year's imprisonment should be regarded as adequate punishment?

56. Besides, this law is desired to have preventive and deterrent effect to hang as a sword of Democles, as it were. A blunted sword exercises no fear specially where the chances of its falling are also so remote. Moreover, farcical and light punishments have a bad psychological effect upon the public mind. The gravity of the offence is minimised, its heinousness loses its enormity and social

opinion gradually begins to mould itself and adopt an attitude of abhorrence to the crime in proportion to the awardable punishment.

57. The Legislature of a country assesses the value of the particular crime by declaring the maximum punishment awardable in respect of such offences and it would be a bad evil day if the growing consciousness of abhorrence to the crime were sought to be notched by the indifference of the legislature in calling a spade a spade and treating it as such.

58. When the policy of the law is not to make prosecution under this crime very frequent, it is all the more necessary that the punishment awardable should not be inadequate and quite disproportionate to the gravity of the offence. When fear of use and not actual use of the law is expected to be fraught with desirable results, it is idle to weaken the force of that fear. A light punishment lowers the dignity of the offence and defeats its own object, if effect is sought to be produced by example. Two years' imprisonment is by no means an excessive one. It already exists on the statute book in relation to crimes committed by girls below 13 and above 12. There is absolutely no reason why it ought to be reduced. The Magistrate has full discretion to discharge an accused with a warning, take bond, inflict fine and award simple or rigorous imprisonment in such cases. Any unreasonable leniency in the fixation of the maximum amount of imprisonment is also not likely to placate public opinion nor to appease feelings of those who are against this law.

59. There is no evidence to show that in the past the present maximum amount has caused any sort of hardship to offending husbands.

60. I am therefore definitely of opinion that the maximum amount of imprisonment awardable in respect of marital misbehaviour offences, when the age of the girl is between 12 and 15, should in no case be less than 2 years.

#### IV

*Whether Marital Misbehaviour should be located under Chapter XX, Indian Penal Code.*

61. I am sorry to say that I do not agree with the view that marital misbehaviour Section should be placed under Chapter XX of I. P. C. This Chapter contains six

sections 493-498 and bears the heading ' of offences relating to marriage.'

62. The offence of martial misbehaviour embodies characteristics which in their essence enter the constitution of offences affecting the human body and it cannot be argued with any plausibility that its proper place is not under Chapter XVI. The act, if done by a stranger, constitutes an offence and is punishable with greater amount of punishment. Thus, so far as the criminal act is concerned, it is an offence both for a stranger as well as a husband and marriage is only a justification for lenient treatment. As very vividly expressed by some of the Bihar witnesses, the husband is a thief while the stranger is a highway robber.

63. Judged from this point of view, the offence of theft and robbery should not fall into different categories merely because different punishments are provided for them. In fact the society, which has been apathetic so far, is growing into its proper consciousness as regards sensibility towards this crime, and a displacement of the section from its proper place may prejudicially affect such growth. To remove it from the Chapter relating to offences against human body is to minimise its enormity from the injury point and to over-emphasise the marital right which is a minor factor in the constitution of the crime as it, properly speaking, only affects the quantum of punishment.

64. It must be clearly understood that the implication of treating the husband's act as an offence predicates two things—(1) that the husband has no right to behave in this particular manner when the age of the girl is less than complete 15, and that the right and duty of the State to protect its subjects from physical injury has precedence over religious beliefs, custom and practices and dalliance with such beliefs, customs and practices however deep-rooted is unjustifiable. In this view it is the duty of the Legislature not to mince matters and fail to call an offence by a proper name and locate it in its proper place.

65. The offence does not arise out of marriage nor does it flow from any of the obligations placed by religion upon husbands. On the contrary it detracts from the absolute right of husbands. The offence is only an amplification of the general rule that no one shall be allowed to hurt another and no act shall be condoned by a state which injures another

unless it comes under any of the general exceptions 76 to 106, Indian Penal Code. In this connection, a reference to Section 87, Indian Penal Code, will not be out of place.

66. A further argument in this connection may be based upon vitala distinction between offences against human body and offences relating to marriage on the score of the right of private self-defence. In regard to offences affecting the human body every person has got a right of self-defence, to defend his own body and the body of another against offences affecting the human body (Section 97 I. P. C.). Suppose a girl of 14 years 11 months and 29 days, who has just passed her matriculation examination, does not agree to her husband having sexual intercourse with her, while the husband insists and wants to ravish her by force relying upon his right given by God's law and religion and in the struggle between the husband and wife the wife repulses the amorous advances and in bare self-defence or in retaliation, in the heat of the moment, to cripple further action strikes the husband and the injury perchance happens to be discovered as grievous. In the struggle that ensues, others also join and some defend the wife and others join the husband. Let me illustrate it by another example. Suppose a man hears the shrieks of a girl of 11 or 12 years while she is being ravished by her husband. He goes to the rescue of the girl and after a struggle extricates her from the grasp of the brutal husband and is beaten and beats in return. An interesting question of law would arise if the act of the wife or her rescuer would be regarded as justifiable in law or not, or in other words, whether she and her supporters would get the protection of Section 97 I. P. C. If this offence is relegated to the Chapter of offences relating to marriage, it is apprehended she and her supporters will not be able to claim protection. In my humble opinion no right is more valuable than that of self-defence and an attempt to take away this valuable right from a helpless young girl and those who may espouse her cause against her own spouse before she is complete 15 is nothing short of unadulterated usurpation and unjustifiable aggression. Truly did Bentham say :—

“ The vigilance of Magistrates can never make up for the vigilance of each individual on his own behalf. The fear of the law can never restrain bad men so effectually as the fear of the sum



total of individual resistance. Take away this right and you become, in so doing, the accomplice of all bad men ”.

In fact, in the name of protection to girls, this recommendation, if accepted, deprives them and the public generally of a most valuable and cherished right. Judged from this point of view, it is better to retain the offence where it exists now.

67. There is another aspect of the case which I wish to emphasise in this connection. A perusal of Sections 493 to 498 would establish that two Sections out of these have really no reference to marriage and do not, strictly speaking, in any way arise out of it. Sections 493 and 496 are in fact an exemplification of deceit and fraud in a particular manner. The offender is really not a lawful husband but a stranger who imposes marriage or a form of marriage. Sections 497 and 498 are examples of offences by strangers against husbands. There is no doubt that they have reference to the act of the wife also but she is neither regarded as an active agent nor as a responsible being, so far as criminality is concerned. Section 495 is only an aggravated expression of the offences mentioned in 494. As regards Section 494 this is practically a misnomer to call it an offence, so far as Hindu husbands are concerned. According to Hindu law, a male Hindu can marry any number of wives. According to Mahomedan law, a Muslim can marry four wives at one time and the law of divorce makes it easy for him to marry any number. Section 494 therefore is a substantive offence for wives where polyandry is not allowed. Section 494 in its nature is an offence which does not arise out of anything pertaining to the first marriage nor is it in any way directly and consequently connected with the first marriage. It arises out of an act unconnected with the first marriage. It may thus only by a stretch be called an offence relating to marriage. It may also, with propriety, be divorced from the chapter, as it does not flow from the 1st marriage.

68. The proper acts, if law choses to treat them as offences, which should fall under the heading, offences relating to marriage are :—

- (a) those mentioned in Sarda's marriage bill (as marriages are not void).

- (b) those mentioned in Section 488 C. P. C. if they are treated as offences.
- (c) those which justify divorce and dissolution of marriage, *e.g.*, cruelty, desertion, etc.
- (d) adultery and elopment or transference of allegiance due to husband to another, where the wife is held guilty.
- (e) sexual intercourse with or living as husband and wife or transference of allegiance due to wife by a husband to any woman, be she married, widowed or virgin.
- (f) any infraction of duties enjoined by law on husband and wife which justifies its being treated as an offence.

69. At present, offences relating to marriage, as detailed forth above in Sections 493 to 498 are grouped in Chapter XX I. P. C. and so far this marital misbehaviour offence has not been classed under that Chapter. So far, Sarda's bill stands apart and if it is passed, the offences mentioned in the bill will not be included in the Penal Code. As a matter of fact, the offences included in that bill possess all the characteristics of offences which can be properly included in the I. P. C. If that bill was complete by itself, with its special procedure and its detective, prosecuting and punishing agency, it could have with some fairness claimed individuality. But as it is, I fail to see any justification for its separate existence.

70. If the recommendations of the Committee are accepted by the Government, I have little doubt that the Government will have to bring in another bill for prevention of early marriages, if the Government want to keep it separate from the Indian Penal Code, embodying the necessary provisions for making the law self-sufficient. It will be absolutely necessary to provide for marriage registers, the agency to keep them and the agency to report infractions of the law. If this machinery for automatic bringing of infractions of the law to courts is not provided for in the Act, the Act will not be worth having, as its usefulness will be most materially curtailed. If this course does not recommend itself to the Government, it would be better to incorporate Sarda's bill's Section relating to offences in the I. P. C. in the Chapter relating

to marriage. In fact, a more logical position would be either to incorporate in the I. P. C. Sections of Sarda's bill relating to offences or to have a separate Act dealing with all kinds of offences relating to marriage. These marital misbehaviour offences will, if the Legislature decides to give precedence to the consideration of marital right over the consideration of injury, find a more suitable place in that law, provided always that the right of self-defence is not taken away.

71. I would therefore recommend that in the absence of a proposal to incorporate marital misbehaviour offences in an Act dealing with offences relating to marriage, sufficient by itself and including offences referred to in Sarda's bill and other *ejusdem generis* offences relating to marriage, it is better to keep the marital misbehaviour offences under Chapter XVI in a separate Section.

## V

### *Institution of suits by Husbands in Respect of Custody or Restitution of Conjugal Rights of Girls below 15.*

72. The Committee have been pleased to make the recommendation No. 38 which runs thus—

“ That the law be amended so that a suit by the husband for the custody of a wife or for restitution of conjugal rights shall not lie where the girl is below 15 years.”

This recommendation fails to take into account that the object which the Committee have in view can be achieved by a less drastic remedy.

73. Even an absence of a recommendation of this nature would not have made any material effect. As the civil law stands at present, courts are not competent to ‘ deliver ’ up the wife to the husband in execution of the decrees for restitution of conjugal rights. They can proceed against her property which usually speaking is non-existent or if existent will in most cases not be proceeded against by the husband in his own interest. Moreover, a recent ruling of the Madras High Court has upheld the right of the parents to resist such a suit brought by the husband on the score of the immaturity of the girl. Anyhow, the ruling, even if followed by other High Courts,

does not go far enough and will not cover the entire ground of the recommendation No. 38 and a recommendation in this behalf does surely ensure protection to girls below 15.

74. The chief objection against the recommendation is that it goes further than is warranted by the limits of the protection which the Committee are anxious to afford and intend to afford consistently with their recommendation No. 32 which runs thus—

“ That a provision corresponding to Section 4 of Act XXIX of 1925 be made exempting from the operation of the proposed amendment, sexual intercourse with a wife between 13 and 15 years of age if the girl-wife was married and had completed 13 before the new Act comes into force.”

Thus, married girls above 13 will not be affected by the new Act and fairness requires that no differentiation be made between husbands whose wives may happen to be with them when this new Act comes into force and husbands whose wives are then away from them and are not allowed to return to them. The same reasons and arguments as underlie recommendation No. 32 apply for exception being made in respect of this recommendation as regards girls answering the same description. Further, the recommendation does not take note of ‘ laws delays ’ in suits of this nature.

75. If a suit is brought for restitution of conjugal rights in respect of a girl who is then full 15, it will be nothing uncommon if it is not ultimately decided before the girl is full eighteen. I do not think it is just to stand between the husband and his legal wife for even a single day after she has completed the statutory age of consent. The husband has got full rights to her companionship and no obstacles are justifiable after that age. In fact, logic would take us further. When law does not invalidate marriages, every husband has got a full, unqualified and absolute right to the custody of his wife. All the rights of the husband are sacrosanct, except one of sexual intercourse with her unless she has completed the age of 15. A recommendation of this nature is justifiable only on the ground of discreet and prudent prevention of the breach of consent law and, as such, it is circumscribed by the necessities of such law.

76. In suits of this kind, usually, the defence is that marriage did not take place, that marriage was not valid and that other circumstances, *e.g.*, cruelty, husband's taking another wife or keeping a concubine have disqualified him from the assertion of marital rights. If the institution of suits of this nature is banned, it is apprehended that owing to lapse of time, evidence may be lost or scales might be turned by the happening of other events. To my mind, there is no valid reason why suits should not be allowed to run their course. Perchance the husband's suit may be dismissed.

77. It need hardly be mentioned that courts are invested by law with a discretion to refuse relief to husbands, even in cases proved otherwise. I do not however think that the question of mere sufficiency of the age of the girl should be regarded as one of the grounds on which the plaintiff should be non-suited in a proper case. There have been cases in which the age of the husbands has disqualified them.

78. But the alternative remedy suggested is not less effective in bringing about the desired results. The suit may be allowed to run its merry course but the decree may be made inexecutable for such period as the girl does not complete her statutory age. There may be cases when the allegations of the husband are that the girl is kept away from him by the defendants for immoral purposes and that the defendants are maltreating her or propose to marry her elsewhere. If the court finds these objections established, or even probably true, the decree may be executed as against the defendants and the girl be made over to safe custody other than the husband's at his instance, proper safeguards by way of bonds being taken from the persons entrusted with such custody. In a case like the one mentioned above, deprivation of the husband of the custody of his wife for the period during which the case is not decided by the highest court is neither just nor advisable, after the girl has attained the age of 15. I would therefore recommend that provision be made that no decree for custody or restitution of conjugal rights be executed in respect of girls below the age of 15 so as to have the effect of the girl being made over to the custody of the husband before that age, provided that, this rule shall not affect wives who had attained the age of 13 at the date of the enactment of this provision. Anyhow, even if the recommendation of

the Committee is accepted, a change in the law of limitation for suits for custody of a wife or restitution of conjugal rights will be necessary.

79. As regards the suggestion of the change in the law of guardianship which the Committee have disapproved, I do not think any purpose would be served by making the change, as the District Judge or guardianship Judge has full discretion in the matter and the interests of the minor constitute according to law the main consideration in the decision of the case. I may however remark that I have some misgivings about the efficacy of the suggestion of making a Magistrate some sort of guardian, competent to receive periodical reports from orphanages and rescue homes and giving instructions for change of custody or other conditions for perhaps many years. I would have preferred some provision whereby the civil authorities (the District Judge, or, where powers are delegated, Senior Subordinate Judge) who exercise powers under the Guardian and Wards Act assumed jurisdiction over such cases and exercised control over them.

80. Magistrates with their hands full of criminal work, with no perpetual succession to their office, possess neither the leisure nor the proper training for this kind of work, whereas the District Judge, who deals with cases of guardianship every day, is expected to bring specialised knowledge and habitual aptitude to bear on this task to the best advantage and proper care of the girls sent to the institutions. It will not be out of place to make a suggestion here in respect of orphan minor girls whether married widowed, or virgins, in respect of whom the offences of rape or marital misbehaviour have been committed or even in respect of whom no offence has been committed but who are without home and protection of guardians and are thus the likely subjects of such crimes. The law should provide that as soon as they appear before a Magistrate or any person applies to a Magistrate for protection being given to them, the Magistrate should, after such enquiry as he thinks fit, make interim arrangements for their safe custody and refer the case to the guardianship court, which should continue in charge of the girl till her majority, and make proper arrangements for her. This looks like an ideal state of things and involves the establishment of Orphanages and Rescue Homes all over the country, at least one at the headquarters of every district. A recommendation

(No. 26) has been made by the Committee for suitable aid and encouragement to institutions giving protection to married girls ordered to be separated from their husbands on conviction of marriage or consent laws. I have made a similar recommendation for married girls (on separation orders being passed under preventive section) being made over to such institutions in the absence of other suitable guardians being available and willing to take charge. No doubt it involves great expenditure but it cannot be gainsaid that it is one of the elementary duties of every civilised Government to make proper arrangements for the protection and proper maintenance of minor children, specially orphans, for each human being is an asset of priceless value to the State.

81. Nor does the State alone owe responsibility in the matter. It is the clear duty of all citizens and religious and social organisations existing in the country, to co-operate in this matter with the Government in this humanitarian work. There are many places where such institutions and homes exist and every effort should be made to take full advantage of such institutions and the Government and the public should extend help to such institutions to make them more useful. There is a great field for private philanthropy in this direction and if the traditional Indian charity were properly directed under the combined effort of public men and bodies and the Government, the question is not one for which a solution cannot be found. Municipalities and District Boards have a special responsibility in this matter. The Minister for Local Self Government should in every Province keep a special eye over this aspect of the administration. The local Legislature may insist and press for a generous provision in the annual budget for this kind of work and annual administration reports should include special mention of efforts in this direction as their special feature.

82. It is hoped that the Government and the public will rise to the occasion and do all they can for the suffering girls of the nation.

THAKURDAS BHARGAVA.

MUSSOORIE;

*The 20th June 1929.*

NOTE BY MAULVI MUHAMMAD YAKUB, M.L.A.

While agreeing with the Report in the main, I feel called upon to make a few observations as regards the religious aspect of the question, according to the Muslim point of view.

2. Islam, no doubt, is an enlightened and progressive religion. From its very inception it has taught the lessons of justice, humanity, equality, love and righteousness, which were unknown to the pre-Islamic world. In the words of a Bengali Hindu admirer of Islam, "Mohammed opened eyes of humanity to the fact that man as a rational being, endowed with gift of understanding, was a responsible being, fully accountable to the Almighty for his deeds and misdeeds. What a tremendous step forward this meant for mankind. Man henceforward became a moral being. He was, so to speak, born again and born with a conscience, that inward judge whose vigilance none can avoid and from whose judgment there is no escape".

3. Its progressive spirit lay in the fact that it introduced for the first time into the world the conception of equality and brotherhood in faith. All Muslims are brethren. <sup>إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ</sup> is a verse of the *Quran*, that Holy Book over which Goethe fell into rapture and in which Gibbon saw a glorious testimony to the unity of God.

4. There was to be no wall of division, no difference founded on the score of nationality and no distinction based on race or colour. Islam allows no room for distinction between plebeians and patricians, commoners and lords and Brahmins and non-Brahmins. Islam truly realised "the parliament of man, the federation of the world". No sooner a man entered the brotherhood of Islam than he acquired a complete equality of rights and status. Belal, a slave of Alappo, and Soheb, another slave from Rome, became the heroes of the day after they had embraced Islam. Nothing like it has ever been realised in the East, and Europe itself has hardly any example to cite of so perfect a democracy as was the one established by Islam.



5. The rights and social status of woman were recognised for the first time, by Islam, and she was allowed a share of the property left by her parents and relations. By enjoining the Mussalmans to "treat their women folk with generosity"\* Islam stopped the cruelty with which women were treated in the world.

6. Maher or dower-debt and a right to obtain *Khula* (separation from husband at the instance of wife) have armed the women professing Islam with a power and influence over their husbands which no other religion or legislation has yet been able to secure for them. These are a few instances to show the progressive nature of Islam. But it does not mean that we are at liberty to change, alter or manipulate the laws and procedure prescribed by religion. Interference with tenets of religion or furthering limitations where not one is placed by religion cannot be allowed to pass under the cover of the progressive nature of Islam. For those who consider religion a mockery it is very difficult to understand a religious man's attitude towards religious beliefs and sentiments. The life of a Mussalman from cradle to grave is a series of religious performances and therefore any foreign element which interrupts or puts limitations on these performances cannot be tolerated from the Muslim point of view.

7. No doubt there are already certain laws and enactments which involve a violation of the canons of Islamic Law, but it does not create, in any way, an estoppel against the Muslim objection to further interference. Two wrongs do not make a right. Islam is a self-contained and self-sufficient religion; we have got a complete set of our own codified laws, and in socio-religious matters, like marriage, divorce, succession and religious and family trusts, we want to be governed by our own personal laws. It may be noted here that the treaty, by which Shah Alam, Emperor of India, delegated to the East India Company the civil administration of this country, reserved the right of the Mussalmans to be governed according to the law of their religion. And the British Government, as the successor of the East India Company, is bound by the treaties and undertakings of its predecessor.

8. I shall concern myself now with the interpretation of the Islamic Law on fixing the Age of Consent and a minimum age for marriage. The *Quran*, while indicating the object of marriage, makes it abundantly clear that a union should be effected after the parties have reached the age of discretion. The following passages from the holy *Quran* may be quoted in support of the above theory:—

Marry from amongst women whom you like.

فَاتَّخِذُوا مِمَّا بَيْنَ يَدَيْكُمْ مِنَ النِّسَاءِ

“And He created wives for you from amongst your own species, in order that you may find peace and comfort with them and He engendered love between the couple.”

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً

“Your wives are like your clothes and you are like their clothing.”

هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ

The *Ahadis* or the sayings of the Holy Prophet serve further to explain the *Quranic* texts:—

“A virgin girl should not be given in marriage without her consent and a widow should not be married without permission being taken from her.”

لَا تَزْنِي الْيَتِيمَ حَتَّى تَسْتَأْذِنَ وَلَا تُنكِحُ الْيَتِيمَ حَتَّى تَسْتَأْذِنَ

The Prophet is reported to have said about an orphan girl that—

“She is an orphan and should not be married without her consent.”

هِيَ يَتِيمَةٌ لَا تَنْكِحُ إِلَّا بِإِذْنِهِ

9. Islam thus generally seems to favour marriages after the age of discretion, but it sometimes happens that special circumstances and the well-being of a girl herself make it imperative that her marriage should be performed at an early age. Islam, therefore, did not fix any age for marriage and marriages of minor boys and girls were kept

permissible. Islam is not an abstract and impractical religion; on the other hand its code of laws is based on principles of utility and Islamic jurisprudence has taken a full account of the moral and other frailties of human nature.

10. The following verse from the *Quran* has been quoted as indicating an age for marriage:—

“ And keep a vigilant eye on the orphans until they reach the age of marriage, and if you find that they are capable of managing their affairs entrust them with the management of their property.”

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا  
لَهُمْ أَمْوَالَهُمْ

11. The verse quoted above has no bearing on the question of marriage; it relates only to the age at which the orphans are to be entrusted with the management of their property. The conditional clause, *viz.*, “If you find that they are capable of managing their affairs”, certainly indicates that the words “reach the age of marriage” ( بلغ النكاح ) do not signify the age of puberty but they relate to the age of *Rushid* ( رُشد ) or capacity to manage one's own affairs.

12. We find that Hazrat Abbas commenting upon this verse in the *Ahkam-ul-Quran* pointed out that it was possible for a man may have grown his beard and still he may not be considered to be capable of managing his affairs. *Hulum* ( حُلُم ), and not *Bulugh* ( بُلُوغ ), is the word which has been used in the *Quran* generally to indicate puberty. It is therefore clear that no age for marriage can be said to have been fixed or indicated by the verse quoted above.

13. In Arabia puberty is reached rather at an early age and climatic conditions of that country are such as create intense sexual desire both amongst men and women. Islam considers adultery as one of the most heinous crimes and it is for this reason that an extremely severe punishment is prescribed for the crime, and both the male and the female, if consenting, are liable to the same punishment.

It must be surprising to those who consider unchastity a minor crime that the Prophet of Islam on certain occasions expressed himself in favour of marriages soon after puberty. The following saying of the prophet as reported by Abn-i-Saied and Ibn-i-Abbas, is expressive of his views on the point :—

“ A man who has a child should give him proper training and should marry him on reaching puberty. If the child was not married on reaching puberty and committed an immoral act the father was to be blamed.”

عن ابی سعید و ابن عباس قال قال رسول الله صلى الله عليه وسلم  
من ولد له ولد ملحق اسمه و ادبه فاذا بلغ فليزوجه فان بلغ ولم يزوجه  
فاصاب اثما فانه اثمه على ابيه

14. Another Hadis to the same effect is quoted by Imam Jafar-i-Sadiq in the Vasi-us-Shia, a book on Shia expositions, to which attention was drawn by a witness at Lucknow. It says: “ Virtuous is one whose daughter does not start menses at her father’s house.” But the restrictions which the law has placed upon the marriage of minor girls by their guardians clearly go to show that such marriages, except under special circumstances, are not favoured by Islam. A distinction has been drawn between the marriage of a minor girl by her father and grandfather and that by any other guardian. While the marriage contracted by the former is binding upon a minor girl she is at liberty to revoke the contract entered into by the latter immediately after she attains puberty. In Islamic law this right is known as *Khiyar-ul-Bulugh* (خیار البلوغ) or the option of puberty. It is also laid down that the marriage of a minor orphan after she has reached the age of discretion, not necessarily majority, should be contracted with her consent. The Prophet himself is said to have annulled the marriage of a minor orphan, daughter of Hazrat Usman Bin Mazun, since it was performed by her guardian against her will.

15 Nevertheless the fact remains that under the Mohammadan law the marriage of minor girls can be contracted by the father and grandfather as well as by other guardians, and by fixing an age of marriage by legislation

they will be deprived of that right. There can be little doubt that under certain special circumstances the exercise of such a right serves also the best interests of the girls concerned. For example take the case of a minor girl whose aged father is on his death-bed and there is no one else to look after the girl, to safeguard and manage her person and property after the father is dead. It would certainly be detrimental to the best interests of the girl if legislation restrains the father from selecting a suitable husband for his daughter.

16. Moreover marriage under the Mohammadan Law is not only a civil contract but also a sacrament and an act of piety, the performance of which is considered as meritorious, deserving of *Sawab* (ثواب) or reward in the next world. The following authentic Ahadis (sayings of the Holy Prophet) may be cited in support of this view:—

“ *Nikah* (matrimonial contract) is our precept. Those of you who are unmarried are the unworthy amongst you and those who die unmarried are the most unworthy of the dead.”

(Jamiul Fawaid.)

ان ستقنا النكاح شراركم غرايكم و اراذل موتاكم غرايكم - ( جامع الفوائد )

“ One who enters into a marriage contract relying upon God Almighty and for the sake of reward in the future world, deserves to receive help from above as well as His blessings.”

(Tibrani.)

من تزوج تقفه بالله ورحملمبا كان حقا على الله ان يعينه و ان يبارك له

“ There is no other act of worship except marriage and belief in Almighty God, which have continued from the days of Adam and which would continue in paradise as well.”

(Bukhari : Kitabul Nikah.)

ليس لفا عبادة شرعت من عهد آدم الى الان ثم تسلم في الجنة  
النكاح والايان

“ Marriage is my precept and one who turns back from my precept does not belong to me.”

النكاح من سنتي فمن رغب عن سنتي فليس مني

“ One who has married has developed half of his faith and the remaining half should consist of the fear of God.”

من تزوج فقد استكمل نصف الايمان فليبق النصف الباقى -

(طبراني)

17. It is therefore evident that mere performance *Nikah* or nuptial ceremony is meritorious and an act of piety in the eyes of Shariat and any limitation placed on its performance may be considered as a violation of the sacred injunctions of Islam and therefore of the treaty between Shah Alam and the East India Company.

18. Yet another aspect of the question is whether a limitation on permissible acts can be imposed if they are followed by evil results. The mere performance of *Nikah* cannot be said as resulting in evil unless it is consummated at an early age. The only reason for enacting a law fixing a minimum age of marriage is that it is very difficult to stop consummation after marriage, and breach of the law of consent are extremely difficult to detect and punish in a court of law. No doubt there is a good deal of force in this argument. Nevertheless several methods have been suggested by the witnesses to make the law of consent an effective one, and to bring home to the masses the knowledge of the evil results of early consummation of marriage and consequent motherhood. Rewards to successful complainants, formation of vigilance societies with powers to lodge complaints, infliction of a lenient sentence and propaganda by means of pamphlets, cinemas and magic lantern shows will serve to disseminate the knowledge of the law and to mitigate the evil. Maulana Maulvi Ahmad Said, Secretary of the Jamit-ul-Ulma-i-Hind, an influential and respectable organization of the Mussalmans, theologians, and Maulana Mohamed Inyatullah of the well-known Frangimahal family of Lucknow have admitted that the Khalif or the Muslim ruler has a right to impose restrictions on acts about which there are no explicit injunctions or orders in the Shariat. Maulana Inyatullah has published also a pamphlet in which he has cited some instances of restrictions having been imposed on permissible acts by the Khalifs. The Khalif Omar is said to have prohibited the Mussalmans from purchasing land in Syria and in the early years of his reign the same Khalif is said

also to have forbidden the widows of the Holy Prophet to perform the Haj. Instances of the like nature can be easily multiplied. According to the commentator of Tajreed and also the author of Sharh-i-Maqasid a Muslim Khalif undoubtedly possesses such a right.

19. Maulana Sayed Sulaiman, an eminent and learned theologian and historian of the day, who could not appear before the committee, owing to certain pressing engagements, has written to me saying that in his opinion the weight of Muslim authorities is in favour of performing the *Nikah* (nuptial contract) after the boy and the girl have reached an age of discretion. In support of this he quotes certain authorities which I have referred to above. He is clearly of opinion that penalizing marriages between minors is permissible in order to put a stop to the reprehensible practice, provided such marriages are not declared void and the rights of the husband and wife, the legitimacy of children and the rules of succession are not interfered with. The Maulana also has some scruples in the administration of such laws by the non-Muslims. He suggests the appointment of *Kazis* empowered to try cases relating to Muslim marriages, divorce and *Khula* and all such causes as are of an intimate and personal nature.

20. On the other hand Maulana Mufti Kifayatullah (who also could not give evidence) and Maulana Ahmad Said, President and Secretary respectively of the Jamit-ul-Ulma-i-Hind, hold a contrary view. They consider any enactment, which interferes with the rights of the parents and other guardians to contract marriages of minor children, as an interference with the Islamic law and unacceptable to the Mussalmans generally. They are of opinion that it would be undesirable to enact a law fixing an age for marriage. The Ulmas of Deoband, who have got a big following in India, also hold the same opinion; and a large majority of other Muslim theologians, who appeared before the Committee as witnesses, also considered the enactment of such a law as opposed to the Shariat. There are other Muslim witnesses, who though not opposed to the marriage law on religious considerations, yet do not like legislation to interfere with the domestic affairs of the people. The Hon'ble Mr. Justice Sayed Wazir Husain, Judge of the Oudh Chief Court, belongs to the last category. No doubt some Muslim witnesses,

not belonging to the theologian class, would prefer a law of marriage to the law of the Age of Consent. Most of them belong to the Punjab and the North-West Frontier Province, where marriages of girls amongst the Mussalmans are performed generally at an advanced age. They express themselves in favour of the marriage law because they believe they will not be affected by such legislation. A good many of these witnesses were not examined orally and in their written statements they had no occasion to discuss the religious aspects of the question. The Muslim opinion being so meagre on the record, it does not justify us to draw any conclusion on its basis. Only 166 Mussalmans, throughout the whole country, have taken any part in the enquiry, out of them 104 sent in their written statements but they were not examined orally. Only 36 presented themselves for oral examination. The number of Mussalman witnesses who did not send in any written statement but were examined only orally is 26. The Committee is certainly not responsible for this paucity of Muslim evidence, every effort was made to secure the opinions of prominent Mussalmans, including some of the well-known theologians, but unfortunately they were not available at the time to give the benefit of their views to the Committee. The fact remains that the Muslim point of view is not sufficiently represented; and I do not think it would be proper and safe to introduce a measure of vast social and religious importance, until additional Muslim opinion, especially that of distinguished theologians, is placed on record.\*

21. It is to be noted that we have not on our record the statement of a single Shia Mujtahid of fame and prominence, and it would be doing great injustice to the Shia Community if changes were introduced into their domestic life without consulting their Mujtahids.

22. It may be pointed out here that the figures, showing the prevalence of early marriage amongst the Mussalmans, are not conclusive enough. They roughly indicate the age of married girls between 10 and 15. As a matter of

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\* Maulana Mufti Kifayatullah Saheb, President, Jamit-ul-Ulma-i-Hind, Maulana Sayed Sulaiman Nadvi, Maulana Husain Ahmad Saheb, Principal of Arabic College at Deoband, Maulana Abdul Majid Saheb of Budaun, Maulana Sayed Shah Sulaman Saheb of Phalwari, Maulana Alhari, Mujtahid of Lahore, and Maulanas Nasir Husain and Sibte Husain, Mujtahids of Lucknow.



fact that the number of married girls at the age of 10 to 13 is very small amongst the Mussalmans, and most of the marriages are between 14 and 15. No authentic figures however are available to show those numbers. It cannot be concluded, therefore, on the basis of the statistics available that the evil of early marriage is extensive and widespread amongst the Mussalmans.

23. My first recommendation is that additional Muslim evidence should be brought on the record before the Marriage Bill comes up before the House for final disposal.

24. My second and chief recommendation is that in case the Marriage Bill is passed into law by the Assembly it should not apply automatically to the Mussalmans, but power should be given to the Provincial Governments to apply the Act to the Mussalmans in a province where the local council by a three-fourths majority of its Muslim members passes a resolution to that effect. This procedure is not a novel one; a similar method was adopted as regards the law relating to the filing of accounts of Muslim charitable properties.

25. It has been argued that the law of marriage and the law of the Age of Consent stand on the same footing and must therefore be treated in the same manner. I am unable to agree with this point of view. According to our Shariat a husband cannot claim consummation of marriage until the girl has reached an age when cohabitation is safe—

“ A husband can claim consummation from his wife only when she can safely undergo the ordeal.”

(Dur-i-Mukhtar.)

و للزواج المطالبة بتسليمها ان تحملت الرجل ( در المختار )

“ The father of a girl, says Bazazi, cannot be forced to hand over a minor girl to her husband.”

(Dur-i-Mukhtar.)

قال البزازي ولا يجبر الاب على دفع الصغيرة الى الزوج ( در المختار )

“ If a girl were weak and delicate, not having enough strength to be subjected to the ordeal of cohabitation, and there may be a fear that she would suffer, it is not permissible for the husband to

cohabit with her even if she were of an advanced age, and this dictum is quite authenticated."

(Fatawa-i-Alamgiri.)

وان كنت نحيفه مهزلة لا تطق الجماع رخصت عليها المرض لا يحل  
للزواج ازيد خل بهاران كبر سنها دهر الصحيح ( فتاوى عالمگیر )

" It is stated in Tatar-Khaniya that even if a mature girl is not fit for cohabitation she would not be ordered to live with her husband."

فی التتار خانیة البالغة اذا كانت لا تتحمل لا یدم بد فعهما الی الزج  
( دارالمختار )

26. It is stated in Fatawa-i-Alamgiri that the Kazi may refuse the husband's petitions for the consummation of marriage with the wife if he finds on enquiry that she has not sufficient strength to undergo cohabitation.

27. All these authorities are sufficient to prove that according to the Shariat (Islamic law) consummation of marriage cannot be forced on a girl as soon as she has attained puberty, if she is not strong enough to undergo the operation without any fear of suffering. Therefore the law of the Age of Consent is exactly in accordance with our Shariat. It does not deprive the Mussalman of his rights unlike the law of marriage, which deprives a father and other guardians of their right of contracting marriages of their minor girls. Moreover our recommendation that the present Age of Consent be raised cannot leave us open to the possible charge of introducing a fresh measure of interference, for the law is already there and has been in existence for over half a century, without any serious objection being raised to it by the Mussalmans. Our present recommendation aims only at bringing the legislation nearer to the injunctions of the Shariat (Islamic law). I have no hesitation, therefore, in concurring with the recommendation of the Committee on this point.

28. In any case I am strongly of opinion that a marriage law would entail great hardship on the public unless exemptions are provided for to suit special cases. My esteemed and learned colleague, Rai Bahadur Pandit Kanhaya Lal, has written an able and exhaustive note on this point. I, therefore, do not feel called upon to write a separate note.

29 I cannot conclude this note without entering a strong protest against the allegation of certain Hindu witnesses in their evidence, to the effect that early marriages amongst their community were started during the Mohammadan rule, because unmarried girls were taken away forcibly by the Mussalmans. It is a pity that men like Mr. Amar Nath Dutt, M.L.A., a member of the Swaraj party, which always harps upon its anxiety for Hindu-Muslim unity, and a learned judge of one of His Majesty's Chief Courts of Justice, should have considered it proper to make this irresponsible and provoking statement, the authenticity of which they cannot prove by a reference to historical facts. It is a part of the mischievous propaganda which is being carried on in the country to attribute all sorts of evils and vices to the Mussalmans in order to create and intensify hatred against them. On the other hand we have the authority of history to state that early marriages amongst the Hindus were prevalent long before the advent of the Mussalmans in this country. The Smritis, which enjoin pre-puberty marriages, are of an older origin than the Mohammadan rule in India. We find in the Ramayan that the marriage of Ram with Sita was performed when both of them were mere children, Sita being only 6 years old. The Mahabharat tells us that the wife of Arjun's son, Abhi Manu, was pregnant at the time of her husband's death on the battle-field at the age of 16. Kalidas's Raghuvansh and Bhaba Bhuti's Malti narrate many other instances of early marriage amongst the high class Hindus. It is not my intention on this occasion to enter into a discussion on the subject. Suffice it to say that it is absolutely false to state that the custom of early marriage was introduced by the Hindus for fear of the Mussalmans.

30. In conclusion I wish to place on record my genuine appreciation of the great interest and enthusiasm shown by the members of the Committee, particularly the lady members, for the well-being of the weaker sex in this country; and I earnestly hope and wish that their efforts would be crowned with success.

MUHAMMAD YAKUB.

*Dated the 20th June 1929.*

## NOTE BY KHAN BAHADUR M. I. KADRI.

I have had the advantage of going over the notes put up by my learned colleagues Maulvi Muhammad Yaku and Rai Bahadur Pandit Kanhaiya Lal.

I agree in the main with the opinion expressed by the Maulvi Sahib regarding the religious aspect of the question connected with the proposed marriage and consent legislation. It would certainly have been better if the Committee had been able to secure greater co-operation from Muslim theologians than has actually been the case, and it be possible to secure the opinions of the gentlemen mentioned by the Maulvi Sahib, without delaying any further the progress of Sarda's Bill in the Assembly, I would support the suggestion. I concur in the protest raised by the Maulvi Sahib against the unfounded insinuations against Muslim made by certain Hindu witnesses.

I agree with Panditji in thinking that it would be advisable to provide for exemptions in appropriate cases under the Marriage Law.

M. I. KADRI

*The 20th June 1929.*

## APPENDIX I.

## THE AGE OF CONSENT COMMITTEE.

*Questionnaire.*

**NOTE.**—*The queries below may be answered wholly or in part according to the sphere of experience of each person answering. Persons willing to answer should send their written replies so as to reach the Secretary, Age of Consent Committee, Simla, by the 15th August at the latest.*

1. Is there any dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code?

2. What are the circumstances which in your opinion justify—

- (1) retaining the law of the Age of Consent as it is, or
- (2) making an advance on the present law.

3. Are crimes of seduction or rape frequent in your part of the country? Has the amendment of the law made in 1925 raising the Age of Consent to 14 years succeeded in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes? If not, what measures would you propose to make the law effective?

4. Has the amendment of 1925 raising the Age of Consent within the marital state to 13 years been effective in protecting married girls against cohabitation with husbands within the prescribed age limit—

- (1) by postponing the consummation of marriage,
- (2) by stimulating public opinion in that direction, or
- (3) by putting off marriage beyond 13.

If not, what steps would you propose to make it effective?

5. What is the usual age at which girls attain puberty in your part of the country? Does this differ in different castes, communities or classes of society?

6. Is cohabitation common in your part of the country among any class or classes of people—

- (1) before puberty,
- (2) soon after puberty,
- (3) before the girl completes 13 years.

Do any of these cases come to court?

7. Do you attribute the practice of the early consummation of marriage before or at puberty, wherever it exists, to religious injunction? If so, what is the authority for and nature of that injunction, and does that authority prescribe any, and what penalty for its breach?

8. Is 'Gaona' or 'Garbhadan' ceremony usually performed in your part of the country? If so, does it coincide with or is it anterior to the consummation of marriage. Is it performed generally after the attainment of puberty and how soon after it?

9. Do you consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage? If not, at what age and how long after puberty may a girl's physical development be considered to be enough to justify such consummation without injury to her own health and that of her progeny?

10. At what age would a girl in India be competent to give an intelligent consent to cohabitation with a due realization of consequences?

11. During your experience, professional or otherwise, have you come across cases in which cohabitation before puberty, or after puberty but before full physical development of a girl resulted in injury to her health or body or prejudicially affected her progeny? If any, give details of age and injury sustained.

12. Do you consider early consummation and early maternity responsible for high maternal and infantile mortality, or for any other results vitally affecting the intellectual or physical progress of the people?

13. Has there been any further development of public opinion in your part of the country in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of the law in 1925? If so, is it general or confined only to certain classes?

14. Do women in your part of the country favour early consummation of marriage for their children?

15. Have any difficulties been experienced in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code? What measures would you suggest to remove or minimise these difficulties?

16. Would the difficulty or margin of error in determining the age be materially reduced or minimised if the Age of Consent is raised to 14 years or above?

17. Would you separate extra-marital and marital offences into different offences? If so, what is the nature and amount of maximum punishment you would prescribe for offences of each class?

18. Would you make a difference in the procedure of trials for offences within and without the marital state and if so, what would you suggest in each case?

19. Would you suggest any safeguards beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion?

20. Do you consider that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage? Which of the two alternatives would be in consonance with public opinion in your part of the country?

21. Would you prefer to rely on the strengthening of the penal law to secure the object in view or on the progress of social reform by means of education and social propaganda?

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#### EXTRACTS FROM THE INDIAN PENAL CODE.

NOTE.—The bracketted portions are to be omitted from and those in *italics* are to be added to the original as per Sir Hari Singh Gour's Bill.

#### SECTION 375.

375. Rape.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under (fourteen) sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.

#### SECTION 376.

376. Punishment for rape.—Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine (unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both).

#### Section 376-A.

376-A. Whoever has sexual intercourse with his own wife, the wife not being under thirteen years of age and being under fourteen years of age, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illicit married intercourse.

\* \* \* \* \*

Extracts from the Code of Criminal Procedure, 1898, Schedule II.

\* \* \* \* \*

Of Rape.

XLV of 1890 Section.	1	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable, or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what court triable.
	2		3	4	5	6	7	8
376	Rape— (If the sexual inter- course was by a man with his own wife not being under 12 years of age).	(Shall not arrest without war- rant).	(Summons)	(Bailable)	(Not compound- able).	(Imprisonment of either description for 2 years, or fine, or both).	(Court of Session, Chief Presidency Magistrate or District Magis- trate).	Court of Session.
	If the sexual inter- course was by a man with his own wife being under (12) 13 years of age.	Shall not arrest without war- rant.	Summons	Bailable	Not compound- able.	Transportation for life, or imprison- ment of either description for 10 years and fine.	Court of Session.	Court of Session.
	In any other case	May arrest without war- rant.	Warrant	Not bailable	Do.	Do.	Do.	Court of Session.
376-A	Illicit married inter- course by husband with wife not under 13 and under 14 years of age.	Shall not arrest without warrant.	Summons	Bailable	Not compound- able.	Imprisonment of either description for 2 years, or with fine, or both.	Presidency Magis- trate or magistrate of the first class.	



## APPENDIX II.

*Names of witnesses examined orally (by Provinces).*

## SIMLA.

1. Rai Sahib Lala Ganga Ram, President, Hindu Sabha, Kasumpti.
2. Mr. Jagat Prasad, Accountant General.
3. Rani of Mandi.
4. Dr. (Miss) Scott.
5. Hon'ble Nawab Sir Col. Ummer Hayat Khan, Member, Council of State.
6. Rai Bahadur L. Mohan Lal, M.L.C.
7. Dr. Kedar Nath.
8. Mrs. B. Rama Rau.
9. Rev. J. C. Chatterjee.
10. Mrs. Kamala Devi Chattopadhyaya.
11. The Hon'ble Dr. U. Rama Rau, Member, Council of State.
12. The Hon'ble Rai Bahadur Lala Ramsaran Das, C.I.E., Member, Council of State.
13. The Hon'ble Mr. V. Ramadas Puntulu, Member, Council of State.
14. The Hon'ble Sir Manekji B. Dadabhoy, K.C.I.E., Kt., Member, Council of State.

## LAHORE.

15. Dr. (Mrs.) M. C. Shave, Lahore.
16. Mr. Bhagvad Datt, D. A. V. College, Lahore.
17. Mr. Duni Chand, Lahore.
18. Mr. Janki Dass, Lahore.
19. Mr. Din Muhammad, Gujranwala.
20. Dr. (Miss) Phailbus, Sialkot.
21. Mrs. Sita Ram Kohli, Lahore.
22. Rani Narendranath.
23. Sardar Lachhman Singh, President, Singh Sabha, Sheikhpura.
24. Mr. Ganpat Rai, Bar-at-Law, Lahore.
25. Mr. Hazara Singh Cheema, Law Student, Lahore.
26. Sardar Mangal Singh, Amritsar.
27. Hon'ble Mr. Justice Sayed Agha Haider.
28. Kumari V. B. Kohli, Lahore.
29. L. Sewak Ram, M.L.C., Lahore.
30. Mr. Kaestha, Vice-Chairman, District Board, Kangra.
31. Mr. R. R. Kumaria, Lahore.
32. Mr. Din Muhammad, B.A., Qadian (on behalf of Dr. Mufti Mohd. Sadiq, Qadian).
33. Mr. Abhay Singh, B.A., Shiromani Gurdwara Parbandhak Committee, Amritsar.

## PESHAWAR.

34. Sardar Diwan Singh, Peshawar.
35. Dr. Parma Nand. Bannu.

PESHAWAR—*contd.*

36. Mr. K. Inayat Ullah Khan, Peshawar.
37. Mr. Aga Pir Syed Munirshah, Secretary, Anjuman-i-Jafria, Kohat.
38. Kaji Mir Ahmad Khan, Government Pleader and Public Prosecutor, Peshawar.
39. K. B. Maulvi Saiduddin, Additional Judicial Commissioner, Peshawar.
40. L. Mehar Chand Khanna, Peshawar.
41. Rai Bahadur L. Karam Chand, Peshawar.
42. Dr. Miss Birch.
43. Dr. Bhola Nath.
44. Khan Bahadur Kulikhan, E.A.C., Peshawar.

## KARACHI.

45. Mr. G. T. Hingorani, M.B.B.S., President, Hindu Sabha, Karachi.
46. Mr. Jamshed N. R. Mehta, President, Karachi, Municipality.
47. Rao Bahadur Dr. P. T. Kothary, Civil Surgeon, Sukkur.
48. Dr. R. V. Shiveshwarkar, Assistant Director of Public Health, Karachi.
49. K. B. Wali Muhammad Hasan Ali, Special Magistrate, Karachi.
50. Mr. Kalumal Pahalumal, B.A., LL.B., Judge, Small Cause Court, Karachi.
51. Dr. Shroff, Health Officer, Karachi.
52. Mr. Virumal Begraj, Representative of the Hindu Panchayat, Sukkur.
53. Rai Bahadur Seth Shiv Ratan Mohatta, Rais, Karachi.
54. Miss Agnes Khemchand, Organising Secretary of All-India Women's Conference, Hyderabad (Sind).
55. S. Durshan Singh Bakhshi, Secretary, Jamrao Sikh Association.
56. Mr. Rupchand Bilaram, Additional Judicial Commissioner of Sind, Karachi.
57. Seth Haji Abdullah Haroon, M.L.A.
58. Rai Bahadur Hiranand Khemsingh, Zemindar, Hyderabad.
59. Mr. C. A. Buck, Shippers and Buyers Association, Karachi.
60. Dr. (Miss) Newnes.
61. Dr. (Miss) Bolton, Karachi.
62. Mr. Mir Ayub Khan, Bar-at-Law, Karachi.
63. Diwan Lalchand Navalrai, M.L.A.
64. Mr. D. D. Nanavati, I.C.S., District and Sessions Judge, Sukkur.
65. Dr. (Miss) K. Tarabai.
66. Mrs. Tyabji.
67. Mr. Hiralal Narayanji, Municipal Commissioner.

## DELHI.

68. Mr. Shiv Dutt Pandey, Meerut City.
69. Mr. Jamshed Ali Khan, Bagpat Estate, District Meerut.
70. Mr. Sudharsi Lal Jain, President, Jain Sabha, Aligarh City.
71. Rai Sahib Mithan Lal Bhargava, President, Arya Samaj, Ajmer.
72. Mr. K. C. Roy, C.I.E., M.L.A.
73. Dr. Sethna, Health Officer, Delhi.
74. Secretary, Jain Sabha, Meerut.
75. Mr. Chand Karan Sarda, B.A., LL.B., Secretary, Hindu Sabha, Ajmer.
76. Dr. G. J. Campbell, Lady Hardinge College, Delhi.

DELHI—*contd.*

77. Mr. P. Ramrichhpal Singh Sharma, Vakil, President, Sanatan Dharm Sabha and Hindu Sabha, Rohtak.
78. Mr. Jugal Kishore, President, Shri Sanatan Dharm Sabha, Delhi.
79. Secretary, Tabligh and Jamit-ul-ulma.
80. Mr. Piyare Lal, Advocate, Delhi.
81. Mr. Shiv Charan Dass, Secretary, Arya Samaj, Chawri Bazar, Delhi.
82. Mr. Amar Nath Dutt, M.L.A.
83. Mrs. J. C. Chatterji.
84. Mr. Desh Bandhu Gupta, Secretary, Provincial Hindu Sabha, Editor, the "Tej", Delhi.
85. Swami Rama Nand Sanyasi, Dalitodhar Sabha, Delhi.
86. Mr. Mir Mohammad Hussain, Municipal Commissioner, Delhi.
87. Mr. Puran Chand, President, Arya Samaj, Agra.
88. Seth L. N. Gadodia, Delhi.
89. Maulana Mazhar Ud-din, Editor "Alaman", Delhi.
90. Khwaja Hasan Nizami.
91. Dr. (Miss) E. M. Brown, M.A., M.D., Mission Medical Hospital, Ludhiana.
92. Maulana Ahmad Said Sahib, Secretary, Jamiat-ul-ulma-Hind, Delhi.

## AHMEDABAD.

93. Naniben Vaishnawa.
94. Dr. Manilal H. Bhagat, L. M. & S., Ahmedabad.
95. Dr. G. R. Talwalker, Medical Practitioner, Ahmedabad.
96. Rao Bahadur Govindbhai H. Desai, Naib Dewan, Baroda.
97. Mr. Mangaldas Girdhardas Parekh, Lal Darwaza, Ahmedabad.
98. Dr. Miss D. J. Medora.
99. Kazi Sayed Nurruddin Husein Ahmed Hussein, Broach.
100. Syed Nawab Ali, Principal, Bahauddin College, Junagadh.
101. Dr. Shankerlal K. Vyas, Ahmedabad.
102. Mr. M. K. Pandit for Dr. Motibai.
103. Mr. Dolatram U. Shah, B.A., LL.B., President, Ahmedabad Municipality, Ahmedabad.
104. Syed Badi-uddin.
105. Mr. M. C. Patel, Bar.-at-Law, Ahmedabad.
106. Lady Vidyagavri Ramanbhai Nilkanth, Ahmedabad.
107. Miss I. N. Bhagvat, B.A. (Oxon), Principal, S. L. V. Gujerat Mahila Pathshala, Ahmedabad.
108. Secretary, Gujerat Social Reform Association, Ahmedabad.
109. The Health Officer, Ahmedabad.
110. I. I. Chundrigar, Hony. Secy., Anjmani-Islam.
111. Mr. Ratilal J. Lakhia, Government Pleader representing Bar. Association, Ahmedabad.
112. Mrs. Aruna Devi Mukerjee, Mehsana, Baroda State.
113. Mr. Bhogilal Chotalal Sutaria, Cloth Market, Ahmedabad.
114. Mr. Ambalal Sarabhai, Ahmedabad.
115. Mr. Dabyabhai, Ijatram, Pleader, Ahmedabad.
116. Mr. D. H. Ambashanker Uttamram Malji, Hony. Organiser, Co-operative Societies, Broach.

AHMEDABAD—*contd.*

117. Mr. N. D. Mehta, Ahmedabad.  
 118. Mr. Dahyabhai P. Derasari, Bar.-at-Law, Ahmedabad.

## BOMBAY.

119. Mr. S. K. Bole, J.P., M.L.C., Bombay.  
 120. Sir Purshotamdas Thakurdas, Kt., C.I.E., M.B.E., M.L.A., Bombay.  
 121. Dr. Miss M. I. Balfour, Majestic Hotel, Bombay.  
 122. Kanji Dwarkadas, Bombay.  
 123. Mr. J. R. Gharpure, B.A., LL.B., Vakil, High Court, Bombay.  
 124. Mr. M. R. Jayaker, M.L.A.  
 125. Mr. P. M. Bhatt, Chief Judge, Bhuj.  
 126. Mr. Jamnadas Madhavji Mehta, M.L.A., Shanti Nivas, Bombay.  
 127. Mrs. Manglagavri Chunilal H. Setalvad, Lalgir Mansions, New Gamde Bombay.  
 128. Mr. S. M. Varde, B.A., LL.B. } Secretaries, Saraswat Brahman Sam  
 129. Mr. J. N. Karande, M.D. } Bombay.  
 130. D. Girdharlal, Assistant Traffic Superintendent, B., B. & C. I. Railw  
 Bombay.  
 131. Professor V. N. Hate, B.Sc., Daivadnya Association, Bombay.  
 132. Mr. Manikram Nanabhai Talpade, B.A., LL.B., Pathare Prabhu Soc  
 Samaj, Bombay.  
 133. Mr. I. S. Haji, B.A., B.Sc., Chowpatty, Bombay.  
 134. Mr. Maknaji J. Mehta, B.A., LL.B., Honorary Secretary, Bom  
 Mangrol Jain Sabha, Bombay.  
 135. Miss B. A. Engineer.  
 136. Dr. Jadavji Hansraj, President, Bhatia Mitra Mandal, Bombay.  
 137. Dr. Mrs. Malini B. Sukthankar, M.B.B.S., J.P., Honorary Physi  
 Cama and Albless Hospitals, Bombay.  
 138. Sir Lalubhai Samaldas, Kt., C.I.E., Bombay.  
 139. Miss M. Katherine Davis, Secretary, Children's Aid Society, Bombay  
 140. Mrs. Avantikabai Gokhalay, President, Hindu Mahila Samaj, Bomb  
 141. Anjumane Zia-ul-Islam, Tardeo, Bombay.  
 142. Mr. R. G. Pradhan, President, Widow's Re-marriage Association, Nas  
 143. Mr. Y. V. Bhandarkar, Secretary, Prathna Samaj, Bombay.  
 144. Mr. R. P. Masani, Vice-President, Bombay, Vigilance Associati  
 Bombay.  
 145. Miss I. Dickinson.  
 146. Dr. Mangaldas V. Mehta, Honorary Principal, Medical Officer, Nowros  
 Wadia Maternity Hospital, Parel, Bombay.  
 147. Mrs. Faiz B. Tyabji, Chowk Hall, Matheran.  
 148. Dr. Miss Cama, Inspectress, Bombay.  
 149. Dr. Miss Kashibai Nowrange, B.A., L.M. & S., Honorary Secreta  
 Arya Mahila Samaj, Bombay.  
 150. Mr. D. G. Dalvi, M.A., LL.B., Honorary Secretary, Presidency Soc  
 Reform Association, Bombay.

## POONA.

151. Rai Bahadur L. V. Purulekar, Pleader, Ratnagiri.  
 152. Mr. A. Y. Kate, President, District Board, Poona.  
 153. Mr. P. Bunter, B.A., LL.B., Government Pleader and Public Prosecut  
 Sacha Pir Street, Poona.

POONA—*contd.*

154. Mr. K. S. Jathar, M.L.C., C.I.E., Narayan Peth, Poona.
155. Rao Bahadur R. R. Kale, B.A., LL.B., M.L.C., Advocate, President, Satara District Social and Liberal Association, Satara City.
156. Khan Bahadur Dr. Kershaw D. Khambatta, Medical Officer of Health, P.C.M., Poona.
157. Dr. Miss Rankin, Missionary Hospital, Poona.
158. Mr. A. K. Asundi, B.A., LL.B., Acting District and Sessions Judge, Dhulia, West Khandesh.
159. Mr. N. J. Shaikh, Assistant Sessions Judge, Dharwar.
160. Mr. Dattatraya Ganesh Kale, Asoda, Taluka Jalgaon, East Khandesh.
161. Mrs. Jankibai Bhat, Lady Superintendent, Seva Sadan, Poona.
162. Rao Saheb Gulabchand Hiralal, Dhulia.
163. Mr. M. D. Karki, M.L.C., Honavar.
164. Khan Sahib Muhammad Ibrahim Makan, Amod.
165. Dr. (Mrs.) Vakil, King Edward Memorial Hospital, Poona.
166. Mr. R. P. Pandit, M.A., LL.B., Assistant Commissioner, Southern Division, Belgaum.
167. Mr. J. S. Kadri, B.A., I.E.S., Educational Inspector, S.D., Belgaum.
168. Mr. G. G. Havaldar, District Court Pleader, President, Bar Association, Bijapur.

## OOTACAMUND.

169. Mr. C. S. Cheluva Iyer, Pleader, Orient Temple, Ootacamund.
170. M. R. Ry. K. R. Sundaram Ayyar Avl., B.A., Vakil, Ootacamund.

## CALICUT.

171. Mr. E. Sankaran Unni, Advocate, Calicut.
172. Mr. Mohammed Schannad, M.L.C., Mangalore.
173. Mr. K. S. T. M. Moidu Sahib, M.L.C.
174. Mr. T. A. Sessa Ayyar Avl., B.A., B.L., Government Pleader and Public Prosecutor, Calicut.
175. Khan Bahadur Haji Ali Barami Sahib Bahadur, Calicut.
176. Mr. K. R. Karant, M.L.C., Mangalore.
177. Mr. Guptam Nambudripad.
178. Mrs. Manjeri Ramaier, Vasantarama, Chalapuram.
179. Dr. K. Nedungadi.

## MADRAS.

180. Diwan Bahadur C. V. Vishvanath Sastri.
181. Rao Bahadur C. V. Anantakrishna Aiyar.
182. Diwan Bahadur T. R. Ramachandra Iyer.
183. Mr. N. Srinivasa Acharya, Advocate and Vice-President of the All-India Brahmana Mahasabha, Madras.
184. Mr. M. Changayya, Madras.
185. Mrs. Malati Patwardhan, Honorary General Secretary, Women's Indian Association, Madras.
186. Diwan Bahadur T. Rangachariar, C.I.E., Madras.
187. Sister R. S. Subbalakshmi, B.A., L.T., Madras.
188. Mr. C. Vencatasubbaramiah, High Court Vakil, Madras.
189. Miss Krishnabai L. Rao, Secretary, Madras Youth's League.

MADRAS—*contd.*

190. Mr. P. Ramanathan, Advocate, High Court, President, Vellore Mahajana Sangam and Secretary, Madras Landlords' Association, Madras.
191. Mr. M. K. Acharya, M.L.A., 46, Linghi Chetti Street, Madras.
192. Mr. C. V. Venkataramana Iyengar, B.A., B.L., Dharma Vignanam, Coimbatore.
193. Bahadur T. M. Narasimha Charlu, B.A., B.L., Cuddapah.
194. Mr. U. P. Krishnamacharya of Benares, Madras.
195. Mr. Sarvotham Rao, M.L.A., Calicut.
196. Brahma Sri K. G. Natesa Sastrigal, Senior Physician, Venkatarama Dispensary and Professor of Ayurvedic College, Madras.
197. Pandit Triumangalam Nadathoor Narasimhachariar, Retired Sanskrit Pandit, Madras.
198. Diwan Bahadur T. Varadarajulu Naidu Garu, on behalf of South Indian Liberal Federation (City Branch), Madras.
199. Mrs. A. R. Lakshmi Pathi, B.A., Madras.
200. Mrs. Alamelu Mangathayarammal, Honorary Magistrate, Madras.
201. Dr. Lazarus.
202. Dr. C. S. Govind Pillai, Health Officer, Madras.
203. Mr. S. Ramaswamy Mudaliar, Ramamundiram, Kilpauk, Madras.
204. Mr. R. Aiyakutti Aiyangar, B.A., B.L., Advocate, Municipal Council, Madras.
205. Khan Bahadur Hakim Abdul Aziz Saheb.
206. The Hon'ble Mr. Justice Ramesam, High Court of Judicature, Madras.
207. Mr. Sami Venkatachalam Chetty, M.L.C.

## MADURA.

208. Mrs. Pankaja Ammal.
209. Mr. Sinna Kariar S. A. F. Ibrahim Sahib.
210. Mr. R. S. Naidu.
211. Dr. K. P. Thomas, Health Officer, Madura.
212. M. R. Ry. N. Natesa Ayyar Avl., B.A., B.L., Advocate, Madura.
213. M. R. Ry. A. Rengaswamy Iyer Avergal, B.A., B.L., Advocate, Madura.
214. Mr. K. Ram Aiyangar, B.A., B.L., High Court Wakil, Madura.
215. Mr. Mahalinga Ayyar Avl., B.A., B.L., Wakil and Editor of Sanathana Dharma Pracharaka Sabha, Kumbakonam.
216. Mr. N. Subramhnya Aiyar, M.A., Travancore.
217. Mr. Gopal K. Menon, Bar.-at-Law, Madura.
218. Mr. Vannianadar Ramaswami, Cosmopolitan Club, Virudhunagar.
219. Mr. A. V. Sitaram Aiyar.
220. Mr. T. V. Umamaheswaram Pillai, Avl. B.A., President, Taluk Board, Tanjore.
221. Mrs. C. P. Hamsammall Doraikannu Mudaliar.
222. Rai Bahadur M. Ramaswamy Sivan, B.A., Coimbatore.
223. Dr. (Miss) I. M. Roberts. } In Charge of Women's Hospital
224. Dr. (Mrs.) Parker Vaughan. } American Mission, Madura.
225. Mr. K. L. Venkataram, Bar.-at-Law.
226. Sri Kariyam and Agent to Sri Shankaracharya.

## VIZAGAPATAM.

227. Mrs. Rajeswaramba, Teacher.

VIZAGAPATAM—*contd.*

228. Mrs. M. Lalitamba.  
 229. Mr. B. S. Ruth, B.A., B.L., Secretary, The Madras Presidency Oriya Association, Berhampur.  
 230. Sri Vikram Deo Varma of Jaipur.  
 231. M. R. Ry. Mantha Suryanarayana Garu, B.A., Pleader, Vizianagaram.  
 232. Diwan Bahadur C. Venkatachalam Pantulu Garu, B.A., B.L., Advocate, Rajahmundry.  
 233. Dr. A. L. Narayan, M.A., D.Sc., F.I.P. (Eng.), Professor of Physics, Maharaja's College, Vizianagaram.  
 234. M. R. Ry. B. Venkatapati Raju Garu, B.A., B.L., C.I.E., Advocate, Vizagapatam.  
 235. M. R. Ry. Rao Sahib T. S. Tirumurti Ayl., B.A., M.B., etc., Professor of Pathology, Medical College, Vizagapatam.  
 236. Mr. Narasimham, Advocate.  
 237. Health Officer, Vizagapatam.  
 238. Dr. R. Adiseshan, B.Sc., Dip. Hyg. (Cantab.), Assistant Director of Public Health, Madras.

## DACCA.

239. Mr. K. Nazimuddin, M.A. (Cantab.), Bar.-at-Law, C.I.E., Chairman, Dacca Municipality, Dacca.  
 240. Mr. Srinath Das, B.L., Pleader, District Court, Mymensingh.  
 241. Miss Leela Nag, M.A., Secretary, "Deepali" Ladies Association, Dacca.  
 242. Khan Bahadur Kazi Zahirul Huq, B.A., Honorary Secretary, Dacca District Anjuman, Dacca.  
 243. Dr. P. C. Sen, Health Officer, Dacca.  
 244. Assistant Director of Public Health.  
 245. Mr. K. Shahabuddin and }  
 246. Mr. Kazimuddin Sahib } On behalf of Dacca District Anjuman.  
 247. Mr. Gopal Chandra Biswas, Vice-President, Bar Association, Barisal.  
 248. Rai Sahib Revati Mohan Sarkar, M.L.C., Dolaipur, Dacca.  
 249. Dr. Mohini Mohan Das, Bangla Bazar, Dacca.  
 250. Dr. V. K. Rao, District Health Officer, Dacca.

## SHILLONG.

251. Maulvi Dewan Abdur Rahim Chowdhury, Chairman, North Sylhet Local Board.  
 252. Maulvi Abdul Matin Chaudhury, M.L.A.  
 253. Rai Bahadur Mahendra Kumar Gupta.  
 254. Mr. Arzanali Mozumdar, M.L.C., Silchar.  
 255. Mr. N. C. Bardoloi, M.L.C., Gauhati.  
 256. Mr. Mohd. Abdullah, B.L., Sylhet.  
 257. Mrs. Shardamajari Dutt. Mrs. Gupta.  
 258. Mrs. Chandra Prabha Sakigane, Assam.  
 259. Mrs. Hilly, Child Welfare Centre, Shillong.  
 260. Pandit Surjya Kumar Tarkasaraswati, Head Adhyapaka and Superintendent of the Silchar Chatuspathi.  
 261. Miss Bhagur.  
 262. The Hon'ble Sir Muhammad Saadullah, Kt., Minister of Education, Shillong.  
 263. Dr. G. H. Roberts, Mission Hospital, Shillong.  
 264. Dr. K. C. Sankar, Health Officer, Shillong.

## CALCUTTA.

265. Miss Jyotir Mayee Ganguli, M.A., Chaudhuri Lane, Calcutta.
266. Mr. Charu Chandra Mitra, Attorney-at-Law, Calcutta.
267. Miss Sorabji, Bar.-at-Law, and Dr. Edith Ghosh, M.B., representative of the Bengal Presidency Council of Women, Calcutta.
268. Mr. Acharyya Muralidhar Banerjee, M.A., President, Bengal Social Reform League, Calcutta.
269. Mr. Dwijendra Nath Dutt, Honorary Secretary, Bengal Social Reform League, Calcutta.
270. Mahamahopadhyaya Ashutosh Sastri, M.A., Ex. Principal, Sanskrit College, Calcutta.
271. Mrs. Latika Basu, Secretary, Chitranjan Seva Sadan, Calcutta.
272. Mr. S. K. Ghosh, I.C.S.
273. Mr. K. C. Roy Chaudhari.
274. The Secretary, Bangiya Brahman Sabha, Calcutta.
275. Mr. S. K. Sen, Bar Library, High Court, Calcutta.
276. Haji Chaudhri Mohd. Ismail Khan, M.L.A., Barisal, Bengal.
277. Mr. Rasik Lal Biswas, Secretary, All-Bengal Namasudra Association, Calcutta.
278. Mr. D. P. Khaitan, 43, Zakaria Street, Calcutta.
279. Shrimati Rajkumari Das, The Principal, Bethune College, Calcutta.
280. Mr. M. C. Ghosh, I.C.S., Secretary to the Government of Bengal, Calcutta.
281. Dr. J. C. Chatterjee, Teacher of Midwifery, Medical School, Calcutta.
282. Dr. S. K. Sen Gupta, B.A., L.M.S., Calcutta.
283. Dr. J. C. Chatterjee.
284. Dr. Kedarnath Ghosh.
285. Dr. Nanilal Pan.
286. Mr. Mrinal Kanti Bose, 46B, Bose Para Lane, Calcutta.
287. Syed Jalaluddin Hashmy.
288. Mr. Mohammad Qassem, Barapara.
289. Babu Annada Charan Roy, Bar Library, Noakhali.
290. Mr. Jogindra Chandra Chakravarti, Dinajpur.
291. Mr. Azizul Huque, B.L., Krishnagar.
292. Mr. N. C. Roy, Secretary, Indian Association, Calcutta.
293. Miss Arbuthnot of the Society for the Protection of Children.
294. Mr. Majumdar, the Health Officer, Calcutta.
295. Sir P. C. Ray, University College of Science and Technology, Calcutta.
296. Kumar Ganganand Sinha, M.L.A.

## PATNA.

297. Pandit Nilkantha Das, M.A., M.L.A., P. O. Sakhipopal, District Patna (Orissa).
298. Mr. K. P. Jayaswal, Bar.-at-Law, Patna.
299. Diwan Bahadur Srikrishna Mahapatra, M.L.C., Cuttack.
300. Mrs. T. S. MacPherson, Hony. Secretary, B. & O. Council of Women, Patna.
301. Ananta Mishra, Esq., Lecturer, Govt. D. S. Sanskrit College, Muzaffarpur (B. & O.).
302. M. Ahmed Bux, Representative of the Orissa Mohammadan Association, Cuttack (B. & O.).



## PATNA—contd.

303. Mr. Sachchidanand Sinha, M.L.C., Bar.-at-Law, Patna.  
 304. Mrs. E. Stillwell, Zenana Bible and Medical Mission, Duchess of Teck Hospital, P. O. Gulzaribagh, Patna District.  
 305. Mrs. Sinha.  
 306. Babu Ram Narayan Singh, M.L.A., President, District Congress Committee, Hazaribagh.  
 307. Mr. Arikishan Sinha, Pleader, Muzaffarpur.  
 308. Babu Gaya Prasad Singh, M.L.A., Muzaffarpur.  
 309. Mr. Syed Muhammad Yunus, Bar.-at-Law, Patna.  
 Deputation from Ladies Conference, consisting of—  
 310. (1) Mrs. Ishwari Nandan Pershad.  
 311. (2) Mrs. Kamaladevi Chattopadhyaya, Organizing Secretary.  
 312. (3) Mrs. K. P. Jaiswal.  
 313. (4) Mrs. S. K. P. Sinha.  
 314. (5) Mrs. P. K. Sen.  
 315. (6) Mrs. Sirirangamma, Mysore.  
 316. (7) Mrs. D. L. Nandoolyer.

## BENARES.

317. Gauri Shanker Prashad, Esq., B.A., LL.B., Vakil, High Court, President, Arya Samaj, Kashi, Benares City.  
 318. Mr. Dharam Dass, Kaviraj, Aurved Vidyalaya, Hindu Vishwa-Vidyalaya, Kashi.  
 319. Dr. K. Pratap Sinha, Superintendent, Ayurvedic Pharmacy, Benares Hindu University, Benares.  
 320. Mr. Muhammad Afi Khan, representative of (Secy.) Anjuman Islamia, Gorakhpore.  
 321. Pandit Shree Sadayatan Pandeya, M.L.C., Chairman, District Board, Mirzapore.  
 322. Rai Bahadur Vaidyanath Dass, B.A., Banker and Zamindar, Cantonment House, Benares.  
 323. Pandit Radha Prasad Shastri, Professor, Oriental College.  
 324. Mahamahopadhyaya Pandit Promoth Nath Tarka Bhushan, Principal, Oriental College, Benares Hindu University.

Deputation of five Kunbis consisting of:—

325. (1) Ramsaran, son of Jakri, Hariharpur, District Benares,  
 326. (2) Somer, son of Ramdat, of Pandepur,  
 327. (3) Ram Niwas, son of Shiv Dayal, of Basinh,  
 328. (4) Tulsi Ram, son of Shiv Niwas, and  
 329. (5) Har Nandan, son of Shiv Dayal.  
 330. The Hon'ble Raja Motichand, C.I.E., Member, Council of State.  
 331. Dr. (Miss) Thungamma, F.R.C.S., W.M.S.  
 332. Pandit Iqbal Narayan Gurtu, M.L.C.

Deputation of three Thakurs consisting of:—

333. (1) Shiv Shanker Singh, Esq., Private Secretary to Raja Motichand, Benares.  
 334. (2) Mr. Rajwant Singh, Professor, Udai Pratap College, Benares.  
 335. (3) Mr. Lantu Singh Gautam, Joint Secretary, Provincial Kshatria Association, Benares.

BENARES—*contd.*

336. Mr. Ram Swaroop Lal Varma, Secretary, Arya Samaj, Ghazipur.  
 337. Rai Bahadur Jagan Nath Prasad Mehta, Executive Officer, Municipality Board, Benares.  
 338. The Health Officer; Benares.  
 339. Mr. Bashiruddin Ahmed, Lecturer, Oriental College, Dara Naga Benares.  
 340. B. Mata Prasad Koeri, Koeri Sabha, Benares.  
 Ladies' Deputation consisting of:—  
 341. (1) Shrimati Nistarni Devi of Badhaun (Brahmin),  
 342. (2) Shrimati Sashimukhi Bahaduri of Calcutta (Brahmin),  
 343. (3) Shrimati Janki Devi Durga Parshad, Kamachha, Benares (Vaishnava),  
 344. (4) Shrimati B. Sita Mai, Superintendent, Basant Ashram, Benares (Brahmin), and  
 345. (5) Mrs. Madho Parshad, Theosophical Society, Benares (Kshatriya).

## ALLAHABAD.

346. Major Dais Raj Ranjit Singh, O.B.E., late I.M.S.  
 347. Dr. Kees, Lady Doctor-in-Charge, Dufferin Hospital, Allahabad.  
 348. Dr. R. N. Banerji, Hon'y. Secretary, Child Welfare Centre, Allahabad.  
 349. Mahamahopadhyaya Dr. Ganganath Jha, M.A., D.Lit., LL.D.  
 350. Pandit Jagan Nath Prasad Shukla.  
 351. Dr. Kailash Nath Katju, M.A., LL.D., Advocate, High Court, Allahabad.  
 352. Rai Bahadur Dr. S. K. Mukherji, L.M.S., Member of the Executive Committee of the Allahabad Maternity and Child Welfare League, Allahabad.  
 353. Pandit Rama Kant Malviya, Advocate, High Court.  
 354. Pandit Beharilal Nehru, Govt. Pleader.  
 355. The Health Officer, Municipal Board.  
 356. Dr. Sir Tej Bahadur Sapru, M.A., LL.B., K.C.I.E., Advocate.  
 357. Munshi Ishwar Saran, M.L.A., Advocate, High Court, Allahabad.  
 358. Mr. Narayan Prasad Asthana, Advocate, High Court.  
 359. Mr. Chet Ram, Municipal Commissioner.  
 360. Hakim Ahmed Hassan Sahib.

## LUCKNOW.

361. Dr. E. A. Douglas, M.B.B.S. (Lond.), Doctor-in-Charge, Lady Kinnaird Memorial Hospital.  
 362. Mrs. Ahmed Shah, Lucknow,  
 and  
 363. Mrs. Mitter.  
 364. Pandit Salig Ram Shastri Vaidya, Lucknow.  
 365. Miss Murphy, W.M.S., Lady Doctor-in-Charge, Dufferin Hospital, Lucknow.  
 366. Raja Suraj Baksh Singh, Taluqdar, Kasmanda, P. O. Karnalpora District Sitapore.  
 367. The Hon'ble Raja Sir Rampal Singh, C.I.E.  
 368. Dr. Dube, Health Officer, Lucknow.  
 369. Dr. Lakshmi Sahai Saksena, B.A., M.M.D., M.B.B.S.  
 370. The Hon'ble Mr. Justice Syed Wazir Hasan, K.B.  
 371. Syed Afzul Hussain, Esq., B.A., LL.B., Vakil.

LUCKNOW—*contd.*

372. Dr. C. B. Adderley, M.B., Medical Superintendent, Lucknow Child Welfare League.
373. The Hon'ble Justice Pandit Gokaran Nath Misra, Judge, Oudh Chief Court, Lucknow.
374. Dr. S. S. Nehru, I.C.S., Deputy Commissioner, Rae Bareilly.
375. Mrs. V. N. Mehta.
376. Mr. V. N. Mehta, I.C.S., Education Secretary, Government Secretariat, Lucknow.
377. Nawab Sajjad Ali Khan, M.L.C., Tarafdar of Benta and Bhorara.
378. Mukandi Lal, Esq., B.A. (Oxon.), M.L.C., Bar-at-Law, Deputy President, U. P. Legislative Council, Lansdowne.
379. Khan Bahadur Sheikh Nasrulla Khan, Retired Deputy Collector and Secretary, Anjuman Islahul-muslimin and Mumtaz Orphanage, Lucknow.
380. Mrs. Phulavati Shukla, B.A., Member of the Standing Committee of the All-India, Women's Conference and Secretary, Oudh Constituent Conference, 11, Clyde Road, Lucknow.
381. Dowager Rani Lalit Kumari Sahiba of Mandi State, Lucknow.
382. Rai Bahadur Dr. D. D. Pandya, D.P.H., Assistant Director of Public Health, Lucknow.
383. Rai Bahadur Thakur Mashal Singh, Ez-M.L.C., President, Arya Pritinidhi Sabha, U. P., Hardoi.
384. Shafikulmulk Hakim Abdul Hamid, K.B.
385. Anis Ahmad Abbasi, Esq., B.A., Editor, 'Daily Haqiqat'.
386. Dr. Alice L. Ernst, M.D., Women's Union Missionary Society of America, Ackerman-Hoyt Memorial Hospital, Jhansi.
387. Moulvi Inayatullah Sahib, Arabic School, Lucknow.
388. Pandit Rameshwar Datta, Secretary, Sanatan Dharm Sabha, Rai Bareilly.
389. Khan Bahadur Hafiz Hidayat Hussain, B.A., M.L.C., Bar-at-Law, Cawnpore.

## NAGPUR.

390. Rai Bahadur P. C. Bose, The President, Municipal Committee, Jubbulpore.
391. Dr. L. Sen, Health Officer, Nagpur.
392. Mrs. W. Tarr, Nagpur.
393. Mr. Laxmi Narayan, B.A., B.L., District and Sessions Judge, Prem Bhawan, Akola.
394. Mr. G. T. Meshram, Vice-President, Civil Station Sub-Committee, Nagpur.
395. Dr. Mehta, Health Publicity Officer, C. P. Secretariat, Nagpur.
396. Mrs. Mukaddam, Lady Superintendent-in-Charge, Dufferin Hospital.
397. Mrs. Biwalkar, Health Visitor and Midwife.
398. Mr. R. M. Deshmukh, M.L.C., Craddock Town, Nagpur.
399. Mrs. Anasuyabai Kale, M.L.C., Craddock Town, Nagpur.
400. Mr. B. G. Khaparde, M.L.C.
401. Rai Bahadur Ganeshdas Kundanmal, Amraoti.
402. Mr. L. K. Ogle, M.L.C., Representative of the depressed classes.
403. Rao Bahadur Sadashiva Jairam, M.A., Mahamahopadhyaya, Nagpur.
404. Mr. Abdul Kadir, Pleader, Amraoti.

## AFRICA V-U.

*Comparative table of Hindus and Muhammedans (Male and Female population) of the different Provinces.*  
 (Taken from Census Report, 1921, Vol. I, Part II, Table VI.)

	HINDUS.			MUHAMMADANS.			OTHERS.			REMARKS.
	Male.	Female.	Total.	Male.	Female.	Total.	Male.	Female.	Total.	
Bam	2,172,264	1,960,145	4,132,409	1,151,675	1,050,785	2,202,460	687,170	684,101	1,271,361	
Bengal	10,536,119	9,667,408	20,203,527	12,937,775	12,253,027	25,210,802	657,328	21,920,453	623,879	
B. & O.*	13,900,636	14,260,482	28,161,118	1,802,720	1,887,462	3,690,182	1,060,510	1,090,379	2,150,889	* Excludes Aden.
Bombay	7,786,525	7,238,906	15,025,430	2,088,653	1,691,445	3,775,098	..	..	..	† Includes Jains.
Burma	5,525,144	5,676,768	11,201,912	314,527	186,065	500,592	895,845	570,750	1,466,595	Buddhists have been shown as Hindus in this statement.
C. P. & Berar	5,809,172	5,812,226	11,621,398	294,928	268,046	563,574	847,299	880,489	1,727,788	No Hindus are shown in the table.
Madras	13,488,102	10,022,910	37,511,012	1,404,000	1,436,488	2,840,488	978,647	985,838	1,967,485	‡ Includes Sikhs.
M. W. P.	115,045	62,876	177,921	1,105,265	967,621	2,062,786	..	..	..	
Unjab	4,794,257	3,379,888	8,674,095	6,165,738	5,243,583	11,444,821	..	..	..	§ Includes Sikhs.
P.	20,180,814	18,274,810	38,405,624	3,388,151	3,092,881	6,481,032	268,780	220,351	489,131	

## APPENDIX V-D.\*

*Number and proportion of married and widowed girls between the ages 10 and 15 for all religions, Hindus and Mahomedans to the total population of girls of that age period for All-India and for different Provinces.*

	1	2	3	4
	Total No. of girls between 10—15.	No. of girls married.	No. of girls widowed.	Percentage of columns 2 & 3 to 1.
<i>All-India.</i>				
All Religions—				
1901 . . . .	15,566,718	6,584,768	275,862	44½
1911 . . . .	15,222,701	6,555,424	223,042	44½
1921 . . . .	16,570,526	6,330,207	279,124	40
Hindus—				
1901 . . . .	11,028,381	5,166,687	227,367	49
1911 . . . .	10,491,997	5,117,635	181,507	50½
1921 . . . .	11,327,411	4,947,266	232,147	45½
Musalmans—				
1901 . . . .	3,185,372	1,244,352	39,091	40
1911 . . . .	3,203,754	1,258,842	36,264	40
1921 . . . .	3,487,589	1,200,722	39,873	35½
<i>Assam.</i>				
All Religions—				
1901 . . . .	287,769	83,811	4,027	30.5
1911 . . . .	298,017	86,006	3,115	29.9
1921 . . . .	383,550	95,747	3,528	25.9
Hindus—				
1901 . . . .	154,961	48,393	2,547	32.8
1911 . . . .	155,960	49,875	1,908	33.2
1921 . . . .	201,480	52,445	2,004	27
Musalmans—				
1901 . . . .	78,779	28,840	1,202	38
1911 . . . .	84,511	30,776	990	37.4
1921 . . . .	114,638	37,527	1,301	34
<i>Bengal.†</i>				
All Religions—				
1901 . . . .	3,778,010	2,212,394	100,056	61
1911 . . . .	2,172,105	1,302,687	52,234	62
1921 . . . .	2,325,989	1,199,856	59,228	54.1

\* Statistics for this Appendix have been taken from Table No. VII, Part II, Vol. I of All-India Census Reports of 1901, 1911 and 1921. Figures in column 4 have been calculated from actuals.

† The variation in population is due to the reorganisation of the Province of Bengal after 1901.

## APPENDIX V-D (Continued).

	1	2	3	4
	Total No. of girls between 10--15.	No. of girls married.	No. of girls widowed.	Percentage of columns 2 & 3 to 1.
<i>Bengal—contd.</i>				
<b>Hindus—</b>				
1901 . . . .	2,315,655	1,433,117	73,564	65
1911 . . . .	918,851	619,191	31,370	70.9
1921 . . . .	941,214	552,184	35,428	62.4
<b>Musalmans—</b>				
1901 . . . .	1,294,340	748,082	25,296	59½
1911 . . . .	1,195,153	672,675	20,475	59½
1921 . . . .	1,312,414	636,287	23,129	52½
<i>Bombay.</i>				
<b>All Religions—</b>				
1901 . . . .	1,002,757	484,202	31,041	51.3
1911 . . . .	894,522	484,678	16,672	56
1921 . . . .	969,652	472,618	26,088	51.5
<b>Hindus—</b>				
1901 . . . .	795,832	428,972	27,682	57
1911 . . . .	698,368	434,479	15,243	64
1921 . . . .	771,445	425,504	24,311	58
<b>Musalmans—</b>				
1901 . . . .	173,909	46,059	2,241	22
1911 . . . .	164,144	41,019	1,098	25½
1921 . . . .	163,335	39,674	1,337	25
<i>C. P.</i>				
<b>All Religions—</b>				
1901 . . . .	566,929	223,182	9,583	41
1911 . . . .	577,689	331,098	8,096	58.7
1921 . . . .	750,230	386,959	16,138	53.7
<b>Hindus—</b>				
1901 . . . .	464,486	200,996	8,341	45
1911 . . . .	479,449	304,357	7,511	65
1921 . . . .	621,959	356,107	14,956	59.6
<b>Musalmans—</b>				
1901 . . . .	15,767	4,079	182	27
1911 . . . .	24,135	7,466	223	31.8
1921 . . . .	29,007	8,558	242	30.3

## APPENDIX V-D (Continued).

	1	2	3	4
	Total No. of girls between 10—15.	No. of girls married.	No. of girls widowed.	Percentage of columns 2 & 3 to 1.
<i>Bihar and Orissa.</i>				
All Religions—				
1911 . . . .	1,763,410	939,047	47,015	56
1921 . . . .	1,827,533	861,210	46,348	49½
Hindus—				
1901 . . . .	140,457	102,582	5,38	76½
1911 . . . .	1,432,203	817,289	42,471	60
1921 . . . .	1,497,004	951,088	41,717	52½
Musalmans—				
1901 . . . .	12,094	2,679	87	22½
1911 . . . .	182,422	93,527	3,555	53
1921 . . . .	191,286	86,373	3,465	47
<i>Madras.</i>				
All Religions—				
1901 . . . .	2,210,030	516,337	18,961	24
1911 . . . .	2,295,029	580,380	19,297	26
1921 . . . .	2,438,224	534,649	23,486	23
Hindus—				
1901 . . . .	1,957,753	488,063	18,015	26
1911 . . . .	2,030,910	548,498	18,251	28
1921 . . . .	2,151,441	505,833	22,209	24½
Musalmans—				
1901 . . . .	151,295	20,342	646	13½
1911 . . . .	160,799	22,489	765	14½
1921 . . . .	171,181	20,286	715	12½
<i>N. W. F. P.*</i>				
All Religions—				
1911 . . . .	98,969	11,328	275	11·7
1921 . . . .	100,722	12,325	379	12·6
Hindus—				
1911 . . . .	4,982	936	16	19
1921 . . . .	5,514	1,003	41	19
Musalmans—				
1911 . . . .	92,897	10,154	251	11·2
1921 . . . .	94,122	11,003	333	12

\* A new province formed after the 1901 Census were taken.

## DIX V-D (Concluded).

1	2	3	4
Total No. of girls between 10—15.	No. of girls married.	No. of girls widowed.	Percentage of columns 2 & 3 to 1.
1,112,780	287,032	4,284	26
981,615	258,190	6,474	28.4
1,040,026	241,746	4,767	23.7
401,655	152,922	2,449	38.6
312,065	120,977	3,333	39.8
317,227	110,418	2,377	35.5
638,575	113,256	1,609	17.9
521,582	110,503	2,460	21.6
584,428	103,354	1,950	18.9
2,475,207	1,338,007	28,951	55
2,316,499	1,208,174	32,170	53½
2,196,089	1,087,379	34,785	55½
2,107,321	1,184,093	25,871	57
1,960,423	1,059,900	28,849	55½
1,844,042	955,117	31,418	53½
358,508	150,557	3,000	39½
337,022	141,067	3,139	42½
328,592	124,782	3,163	42½

between 1901 and succeeding censuses is explained by  
after 1901.



## APPENDIX V-F.\*

*Proportion of unmarried girls of the Age Periods 10-15, 15  
from 1881 to 1921 (All India).*

The number of unmarried females per one thousand for the per  
of 10 to 15 years of age.

Year.	All religions.	Hindus.	Musalman
1881 . . . . .	481	446	517
1891 . . . . .	491	442	514
1901 . . . . .	559	511	597
1911 . . . . .	555	495	596
1921 . . . . .	601	543	644

A similar table for the number of unmarried females between  
ages of 15 to 20.

Year.	All religions.	Hindus.	Musalman
1881 . . . . .	122	101	120
1891 . . . . .	132	100	104
1901 . . . . .	179	141	161
1911 . . . . .	163	122	137
1921 . . . . .	188	138	153

\*Census Report, 1921, Vol. I, Part I, page 164.

## APPENDIX V-G.

*Number of married males and females per thousand males and females of Age Periods 0-5, 5-10 and 10-15 from 1891 to 1921 (All India).*

Census Year.	Number of married girls per one thousand females for different age periods.			Number of married males per one thousand males for different age period.		
	0-5	5-10	10-15	0-5	5-10	10-15.
1881 . .	*	*	500	*	*	152
1891 . .	13	123	495	6	36	154
1901 . .	13	102	423	7	36	134
1911 . .	14	105	430	7	37	129
1921 . .	11	88*	382	6	32	116

\* Not available.

(Census Report, 1921, Vol. I, Part I, page 164.)

## APPENDIX VI-A.

## MATERNAL MORTALITY.

*A Preliminary Study.*

[By Dr. R. Adiseshan, B.Sc., Dip. Hyg. (Camb.), Assistant Director of Public Health, Madras, dated 1st February 1929.]

A difficulty frequently experienced by the Public Health officials and workers in charge of maternity relief and Child Welfare organizations in this country is in getting reasonably correct statistics of maternal mortality. The extraordinary variations in the maternal death rates recorded in the different Provinces and in Cities in the same Province are so incredible that little value can be attached to these figures. The following is an example—

TABLE 1.

	Variations in Maternal Death rates in 1925.
(a) Provinces—Bengal, Bombay, Central Provinces and Madras . . . .	2.03 to 5.27
(b) Cities in United Provinces . . . .	3.0 to 17.5
(c) Cities in Madras Presidency . . . .	9.0 to 32.8
(d) Cities in Bombay . . . . .	5.8 to 53.2
<hr/>	
England and Wales . . . . .	3.6 to 4.3

## 2. The causes of these abnormal variations are:—

- (a) Maternal mortality rates being expressed as a ratio to live births, the rates will be inflated or lowered to the extent of the defects in the enumeration of births and maternal deaths respectively.
- (b) Errors in the compilation of returns resulting from the registrar's ignorance of the nomenclature of diseases, hæmorrhage and eclampsia for example, being classified as "other causes".
- (c) Under the existing rules, it is only those deaths that occur during or within 14 days of child birth are assigned to maternal mortality. This is a very serious cause of under-statement. For instance, in the investigation of puerperal mortality registered in Saxony during the period 1901 to 1904, it was found that only 70 per cent. occurred in the first two weeks, the corresponding ratio in the present investigation being approximately 60 per cent.

3. When the total maternal mortality statistics are so defective, it is almost impossible to determine the share of the several diseases responsible for the mortality. In order to surmount this difficulty, attempts have been made from time to time to get this information by indirect methods. One of these is by applying to the general population the experience of maternity hospitals. This method is however open to serious objection as the hospital population is an adversely selected one.

The method commonly adopted by the Public Health Department of this Presidency is based on the trend of mortality in the two sexes at the different ages. Unlike in other countries, the death-rate in women in

the ages 15—30 is, in this Presidency and probably in the rest India, markedly higher than in men; in the other age-periods, the male mortality is higher as in other countries. This may be seen from the following statement:—

TABLE 2.

England and Wales.			1926.		Madras Presidency.		
Ages.	Death-rate per 1,000 population in the age intervals.		Ages.	Death-rate per 1,000 population in the age interval.			
	Male.	Female.		Male.	Female.		
0—5 . .	23.34	18.77	0—5 . .	87.23	78.01		
5—15 . .	2.01	1.86	5—10 . .	9.5	8.9		
15—25 . .	2.79	2.65	10—15 . .	5.7	5.6		
25—35 . .	3.70	3.32	15—20 . .	8.2	11.8		
—45 . .	6.12	4.64	20—30 . .	10.2	12.0		
—55 . .	11.07	8.19	30—40 . .	12.7	12.6		
—65 . .	23.31	17.41	45—50 . .	18.6	14.5		
—75 . .	56.84	43.89	50—60 . .	29.4	24.8		
75 & above .	147.49	126.27	60 & above .	75.4	75.4		

In the absence of any other causes excepting greater risks of maternity to explain the higher incidence of mortality in the ages 15—30, it is presumed that the excess mortality in women represents maternal deaths. Even then these figures are an under-statement as no allowance is made for the greater liability of the female in these ages as in other ages and for maternal deaths in the age 10—15 and 30 and above.

4. As such estimates are after all attended with the risk of a certain amount of speculation, an investigation was started in order to determine by actual field study the maternal mortality rate and the various factors associated therewith as obtain under ordinary conditions. This paper is a summary of the preliminary statistical analysis of the histories of over 7,000 confinements registered in Madras, Madura, Trichinopoly and Coimbatore during the period October 1927 to September 1928. These confinements correspond approximately to a population of 183,000, the great majority being Hindus who form the preponderating element in this Presidency. The field work was entrusted to members of the Public Health Department of these four cities chosen in consultation with the Health Officers. The different points on which information was elicited are shown in the questionnaire form, specimen of which is annexed. Apart from the fact that the population under enquiry consisted of Hindus and is mainly urban in character, the only other selection, if it could be considered a selection at all, consisted in confining the investigation to such portions of the cities which, on account of their compact situation, facilitated the conduct of investigation. Subject to the limitations inevitable in a field study of the present kind, the results of the preliminary statistical analysis are briefly discussed below.

5. *Age at the time of confinement.*—Out of 7,324 confinements one was at the age of 12, four at age 13 and 38 at the age of 14. The proportion of confinements below 15 was 0.59 per cent. One of the items of information ascertained in the present investigation in the case of confinements under 18 years of age was the age of the mother at the time of consummation of marriages. In some instances, information of this has been furnished even for higher ages. The sub-joined statement compiled from nearly 900

cases in which the last confinement was below 20 years of age gives an idea of the proportion of marriages in the earlier ages:—

TABLE 3.

	Mother's age at consummation of marriage.	Number of marriages.	Proportion per cent. to total.
12 . . . . .		120	13.82
13 . . . . .		153	17.63
14 . . . . .		192	22.11
15 . . . . .		215	24.77
16 . . . . .		116	13.36
17—19 . . . . .		72	8.29
Below 20 . . . . .		868	100.00

Although early marriage are fairly frequent, it is a matter for surprise that, the ratio of confinements below 14 to the total at all ages is only 0.59 per cent.

The ratios of confinements in the different ages to the total are shown in the following statement:—

TABLE 4.

	Age interval.	No. of confinements.	Proportion to Total.
Under 15 . . . . .		43	0.59
15—19 . . . . .		1,811	24.73
20—24 . . . . .		2,289	31.25
25—29 . . . . .		1,748	23.87
30—34 . . . . .		934	12.75
35 and above . . . . .		499	6.81
All ages . . . . .		7,324	100.00

6. *Plural Births.*—These amounted to just 1 per cent. of the total confinements. Excepting one triplet, the rest were twins.

7. *Proportion of Normal and Abnormal confinements.*—For purposes of this investigation, it is only those confinements in which instrumental delivery or other surgical interference was necessary, that are classified as abnormal. The proportion of these to the total at all ages was 3 per cent. The maximum was in the ages 15—24 and 30—34 and the minimum in the age period 25—29 (excluding the ages under 15 in which the proportion was nil).

TABLE 5.

Age period.	Total confinements.	No. of abnormal cases.	Ratio of column (3) to (2).
Under 15 . . . . .	43	0.0	0.0
15—19 . . . . .	1,811	63	3.47
20—24 . . . . .	2,289	79	3.45
25—29 . . . . .	1,748	37	2.12
30—34 . . . . .	934	29	3.10
35 and above . . . . .	499	14	2.81
All ages . . . . .	7,324	222	3.03

In the experience of the Madras Government Hospital for Women and Children, the proportion of instrumental deliveries during 1910-27 varied from 7 to 14·7 per cent., the corresponding figure in the Norway Hospitals for the years 1917-18 being 3·48 per cent.; the latter figure conforms more or less with the rate arrived at in the present investigation.

8. Ordinarily, on account of defective registration of still births, the maternal death-rate is represented as a ratio to every 1,000 live births. In the present investigation, however, the number of confinements at risk being definitely known, the death-rate has been calculated with reference to the total births including still births.

Among the 7,324 confinements there were 131 deaths directly or indirectly attributed to child-birth. This corresponds to a maternal death-rate of 17·89 per 1,000 births. This is in marked contrast with the corresponding rates in other countries.

TABLE 6.

Countries.	Maternal Death-rate per 1,000 Live Births.
Cities under investigation (1927-28) . . . . .	18·45
Denmark, 1920 . . . . .	2·35
Holland, 1920 . . . . .	2·42
Sweden, 1920 . . . . .	2·58
Japan, 1920 . . . . .	3·53
Union of South Africa, 1920 . . . . .	4·10
England and Wales, 1920 . . . . .	4·33
Germany, 1920 . . . . .	5·15
France, 1920 . . . . .	6·64
United States of America, 1920 . . . . .	7·99

9. *Maternal Mortality in relation to Still births.*—In confinements which resulted in still births, the maternal death-rate was 90·36 as compared with 16·20, the death-rate per 1,000 confinements which resulted in live births.

10. *Maternal Mortality according to age at Confinement.*—The mortality rate is highest when confinement occurs before 15 years of age and drops by nearly 50 per cent. in the ages 15—19, in the ages 20—24 the death-rate corresponds to the rate at all ages. Details for the different age periods are shown in the following statement:—

TABLE 7.

Age.	No. of confinements.	Deaths.	Death-rate per 1,000 confinements.	Deaths at all ages=100. Proportionate mortality figures.
Under 15 . . . . .	43	2	46·51	260·03
15—19 . . . . .	1,811	43	23·74	132·73
20—24 . . . . .	2,289	41	17·91	100·13
25—29 . . . . .	1,748	25	14·30	79·95
30—34 . . . . .	934	13	13·92	77·83
35 and above . . . . .	499	7	14·06	78·61
	<hr/> 7,324	<hr/> 131	<hr/> 17·89	<hr/> 100·00

The comparative risks of maternal mortality at the different age-intervals will be more readily seen from the last column of the statement, mortality at all ages being taken as 100.;

For purposes of comparison, the age-period maternal death-rates United States of America for 1921 are shown below:—

TABLE 8.

	Under	15	15—19	20—24	25—29	30—34	35—39	40—44	45 & ab
Maternal Death rates . . .	20.0	6.8	5.9	5.6	7.4	10.3	13.1	19.2.	

11. *Order of Confinement.*—This appears to exercise a marked influence on maternal mortality. The risk to the mother at confinement is at maximum in the first birth order, the mortality-rate being nearly twice that in all birth orders and is at its minimum in the 2nd and the 6th confinements. The maternal death-rates in the different birth orders are shown below:—

TABLE 9.

Birth-Order.	Confinements.	Deaths.	Death-rate per 1000 births.
First . . . . .	1,553	51	32.84
Second . . . . .	1,364	13	9.52
Third . . . . .	1,223	24	19.62
Fourth . . . . .	953	12	12.59
Fifth . . . . .	771	13	16.86
Sixth . . . . .	491	4	8.15
Seventh . . . . .	414	4	9.66
Eighth . . . . .	233	5	21.46
Ninth and above . . . . .	212	5	23.58
Total . . . . .	7,324	131	17.89

The corresponding figures for New South Wales may in this connection be found to be of interest.

TABLE 10.

*Maternal Mortality Rates, by order of Birth: New South Wales, 1893-1898.*

Order of birth.	Maternal Mortality per 1,000 births.
First . . . . .	8.82
Second . . . . .	4.40
Third . . . . .	5.11
Fourth . . . . .	5.27
Fifth . . . . .	6.60
Sixth . . . . .	6.19
Seventh . . . . .	7.34
Eighth . . . . .	8.71
Ninth . . . . .	10.52
Tenth . . . . .	9.02
Eleventh . . . . .	9.06
Twelfth . . . . .	14.12
Thirteenth . . . . .	14.01
Fourteenth and over . . . . .	7.70

12. *Maternal Mortality according to Age and Birth-Order.*—It will be seen from the two preceding paragraphs that the maternal death-rate is highest in the first birth-order and in ages under 15. From this, a very pertinent remark may be raised, *viz.*, that the high death-rate in early ages is due not so much to age as to the order of confinement, the great majority of confinements in the earlier ages being first confinements. This argument does not however seem to be in consonance with the results of the present enquiry as may be seen from the following statement:—

TABLE 11.

*I.—Birth-Order.*

Age.	Maternal death-rate per 1,000 births.
Under 15 . . . . .	51.28
15—19 . . . . .	33.04
20—24 . . . . .	30.69
25—29 . . . . .	27.78
30 and above . . . . .	45.45
All ages . . . . .	32.84

It appears therefore that the risk to the mother at the first confinement is greatest when it occurs before the age of 15 and it is almost as dangerous at the age of 30 and later.

As regards the second and later confinements, there does not appear to be any correlation between the birth-order and the age of the mother at confinement.

13. *Causes of Death.*—Sepsis and Septicaemia (a large part of which is preventable) caused nearly 60 per cent. of the total mortality. Eclampsia and Difficult Labour caused about 9 per cent. and 8 per cent. of the deaths.

TABLE 12.

Causes of Death.	No. of deaths.	Percentage of Total.
Puerperal Sepsis and Septicaemia . . . . .	77	58.78
Eclampsia . . . . .	12	9.16
Difficult Labour . . . . .	11	8.40
Hæmorrhage . . . . .	5	3.82
Other causes . . . . .	26	19.84
	131	100.00

14. *Attendance at Labour.*—For purposes of the present study, confinements which at any stage were handled by untrained midwives are classified as such although skilled aid might have been summoned at a later stage. According to this grouping, the proportion of confinements attended by trained agency was 36.37 per cent. and by untrained agency 63.63 per cent. These figures for four of the most important cities of the Presidency are ample proof of the inadequacy of skilled maternity aid for attendance at confinement.

A most disconcerting feature in the present study is the maternal mortality rate in the cases attended by trained midwives. Until a more detailed analysis is made, it is not possible to state whether this feature is due to a larger proportion of abnormal and complicated cases in this group or to any other cause. No definite conclusion can therefore be drawn at the present stage.



15. *Economic Conditions*.—A rough classification of the confinements was made according to the income of the households. The results are shown in the following table:—

TABLE 13.

Average household monthly income.	No. of confinements in the group.	Maternal death-rate per 1,000 confinements.
Under Rs. 25 . . . . .	3,200	19.06
Rs. 25—49 . . . . .	2,759	17.09
Rs. 50 and above . . . . .	1,274	18.05

According to this grouping economic factors do not seem to influence maternal mortality.

16. Besides maternal mortality, the present investigation was availed of to collect information regarding still births and neo-natal deaths. The results of the analysis are set forth below.

17. *Still Births*.—Among the confinements analysed, there were 7,176 live births and 166 still births. The proportion of the latter to the former is 2.31 per cent. The rate of still births appears to be at its highest when the mother's age is 15-19 and 30 and above. Details are shown in the following statement:—

TABLE 14.

Age Group.	Live births.	Still births.	Proportion of still births to 100 live births.
Under 15 . . . . .	41	0	0
15—19 . . . . .	1,773	47	2.65
20—24 . . . . .	2,248	46	2.05
25—29 . . . . .	1,722	29	1.68
30—34 . . . . .	909	29	3.19
35 and above . . . . .	483	16	3.31
All ages . . . . .	7,176	166	2.31

In relation to birth orders, the ratio of still births to live births is lowest in the third birth order. There is a progressive decline in the ratio from the 1st to the 3rd birth orders after which there is a steady increase.

TABLE 15.

Birth Order.	Ratio of still births to 100 live births.
First . . . . .	2.51
Second . . . . .	2.40
Third . . . . .	1.66
Fourth . . . . .	2.03
Fifth . . . . .	2.39
Sixth and above . . . . .	2.74
Total for all Birth Orders . . . . .	2.31

18. *Neo-Natal Mortality*.—As all the children in the present investigation were exposed to risk of dying during the fifth month of their existence, neo-natal mortality in some of its aspects may be considered.

Out of 7,180 children born alive and with respect to whom information regarding survival or death has been furnished, 780 died in the first month of life. This represents a neo-natal mortality rate of 108.70. As approximately 50 per cent. of infant mortality occurs within the first month of life, this neo-natal rate of 108.70 corresponds to an infant mortality rate of 217.40 per 1,000 live births.

The incidence of mortality of infants is at its maximum in the first birth order and when the mother is under 20 years of age. It decreases steadily in the later birth orders and as the age of the mother at confinement increases. The details are shown in the following two statements:—

TABLE 16.

*Neo-Natal mortality in relation to the age of the mother.*

Age of the Mother.	Live births.	Neo-Natal deaths within one month.	Death-rates per 1,000 births.
Under 15 . . .	43	8	186.05
15—19 . . .	1,771	227	128.17
—24 . . .	2,248	240	106.76
—29 . . .	1,722	173	100.46
—34 . . .	909	88	96.81
35 and above . . .	483	44	91.10
All ages . . .	7,176	780	108.70

TABLE 17.

*Neo-Natal Mortality as per Birth Order of the child.*

Birth Order.	Live Births.	Deaths within one month.	Death-rate per 1,000 births.
First . . .	1,515	231	152.48
Second . . .	1,332	144	108.11
Third . . .	1,203	110	91.44
Fourth . . .	934	86	92.08
Fifth . . .	753	75	99.60
Sixth . . .	485	47	96.91
Seventh and above . . .	954	87	91.19
All Orders . . .	7,176	780	108.70

*Economic conditions.*—Unlike maternal mortality, Neo-Natal mortality seems to be influenced to some extent by economic conditions. The death-rate per 1,000 births in the first month of life was 120 in families whose income was below Rs. 25 per mensem, 105 when the income was between Rs. 25 and 49, and 84 when the income was Rs. 50 and above.

Review on between the number of married girls under the age 15 and female mortality between the ages 15 and 20 (Censuses 1911 and 1921).



ns.—From a preliminary statistical analysis of 7,324 confined cities in Madras Presidency, the following conclusions

ugh marriages before the age of 15 are of frequent occurrence. The number of confinements occurring before this age comprised 7.0-6 per cent. of the confinements at all ages.

Proportion of plural births was about 1 per cent. of the total.

Proportion of abnormal confinements to the extent that instrumental delivery or other surgical interference was necessary, 1.7 per cent. of the total confinements.

Maternal death-rate in the confinements investigated is 17 per thousand births which compares very unfavourably with corresponding figures in most other countries.

Maternal death-rate in the case of confinements resulting in still births was a little over  $5\frac{1}{2}$  times the death-rate in the case of confinements resulting in live births.

Maternal mortality is at its maximum in the earliest relation to the order of confinement, the maternal mortality is highest in the first confinement. Also in the 1st Births, the earlier the age of the mother, the greater is the risk of maternal death. As regards the later birth orders, there does not appear to have any appreciable influence on maternal mortality.

More than 60 per cent. of the puerperal deaths was due to Septicaemia which are preventable to a large extent.

Infected conditions do not seem to have any relation to maternal mortality.

Maternity aid was available in only about a third of the confinements, which shows the extreme inadequacy of suitable maternity relief even in important cities.

Ratio of still births to live births was 2.31. This ratio was highest at the two extremes of the child bearing age of the mother and in the earlier and in the later birth orders.

Mortality rate among infants in the first month of life was 1.5 per 1,000 births.

Prevalence of neo-natal mortality is greatest in the first birth when the mother is under 20 years of age.

Infected conditions seem to have an inverse relationship to neonatal mortality.

It is pointed out that in the present analysis, the relationship between the two has been considered.

It is suggested to continue the enquiries for another year in the city and to start similar investigations in other places (urban) in order to get a more representative sample of the population with a view to greater accuracy when the detailed statistical analysis is undertaken. The present enquiry being probably the first of its kind in the general population is concerned, it would be of great value if investigations on more or less similar lines are carried out in the country so that the results may be comparable with the improvement of maternity relief may be worked out more than hitherto.

## APPENDIX VI-B.

## MATERNAL MORTALITY IN ENGLAND AND WALES AND SCOTLAND.

(Figures from Registrar General's Returns.)

*Number of Deaths at ages 10—14, 15—19 and 20—29 years (Males and Females).*

Year.	ENGLAND AND WALES.						SCOTLAND.					
	AGE 10—14 YEARS.		AGE 15—19 YEARS.		AGE 20—29 YEARS.		AGE 10—14 YEARS.		AGE 15—19 YEARS.		AGE 20—29 YEARS.	
	Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.
1918 .	6,435	7,353	12,031	10,613	29,613	29,616	835	931	1,355	1,345	3,153	3,447
1919 .	4,167	4,290	6,274	6,023	16,050	16,686	559	696	989	893	2,416	2,305
1920 .	3,530	3,725	5,070	4,809	11,254	11,975	529	503	840	717	1,079	1,889
1921 .	3,234	3,324	4,914	4,778	10,361	11,270	484	482	722	717	1,476	1,768
1922 .	3,177	3,318	4,720	4,570	10,980	11,387	454	453	680	697	1,561	1,833
1923 .	2,005	2,927	4,551	4,473	10,320	10,392	412	424	620	628	1,445	1,575
1924 .	2,075	2,978	4,646	4,404	10,524	10,779	491	436	666	671	1,420	1,635
1925 .	2,988	2,914	4,737	4,583	10,432	10,807	423	448	656	638	1,427	1,581
1926 .	2,646	2,530	4,451	4,371	10,189	10,464	436	382	609	605	1,371	1,597
1927 .	2,649	2,557	4,519	4,318	10,878	10,674	433	372	629	606	1,384	1,438

NOTE.—(i) The population of males and females in a given year at the different age periods must be taken into consideration to compare the death rate. For instance taking the age period 15 to 19 the male population in England and Wales was 1,727,823 and female population 1,775,231. That is there are 1026·86 females for every thousand males in the population. The deaths of males and females for this period should be expected to be in that proportion that is female deaths should be 2·68 per cent more than male deaths but in fact they are less by 2·76 per cent as there are only 973·32 female deaths per thousand male deaths.

(ii) Figures of population are taken from page 127 of Census Report of England and Wales for the year 1921.

## APPENDIX VII-B.

*Infantile mortality in important cities and towns of India.*

(Annual Reports for 1923, 1924, 1925 and 1926 of the Public Health Commissioner with the Government of India.)

Cities and Towns.	As per Census Report of 1921.	INFANT MORTALITY RATES PER 1,000 LIVE BIRTHS-DURING			
		1923.	1924.	1925.	1926.
<i>India.</i>					
Bombay City . . . . .	556	269	275	259	255
Calcutta . . . . .	386	295	317	326	372
Madras . . . . .	232	254	264	279	282
Rangoon . . . . .	303	342	353	352	320
Howrah . . . . .	§	264	278	291	339
Dacca . . . . .	§	237	227	222	234
Poona . . . . .	§	592	1,042	611	733
Sholapur . . . . .	§	233	253	232	224
Surat . . . . .	§	218	350	330	453
Ahmedabad . . . . .	§	298	344	323	438
Karachi . . . . .	249	218	256	222	253
Shikarpur . . . . .	§	338	318	325	248
Cawnpur . . . . .	§	495	477	420	484
Allahabad . . . . .	§	280	239	236	244
Benares . . . . .	§	298	275	253	314
Lucknow . . . . .	§	288	302	260	287
Nagpur . . . . .	§	251	285	258	302
Jubbulpore . . . . .	§	283	261	259	279
Bassein . . . . .	§	302	312	292	330
Moulmein . . . . .	§	245	234	202	238
Mandalay . . . . .	§	324	318	287	334
Puri . . . . .	§	335	413	419	510
Lahore . . . . .	§	238	214	222	241
Delhi . . . . .	233	226	174	183	238

§ Figures not available.

N.B.—Figures for 1927-28 and 1929 not available at date of report

## APPENDIX VII-C.

*Relation between the number of married girls under 15 and infantile mortality in India (Census 1921).*

Province.	No. of married girls below 15 per 1,000 girls below 15.	INFANTILE MORTALITY.	
		Average of decade 1911-20 excluding 1918.	
		Males.	Females.
1	2	3	4
1921.			
I			
North-West Frontier Province .	30	178	174
Madras . . . . .	85	194	177
Bengal . . . . .	162	214	200
United Provinces . . . . .	177	229	219
Central Provinces . . . . .	207	274	243

This table shows that infant mortality increases with the increase in the number of married girls below 15.

II			
Punjab . . . . .	76	203	202
Bombay . . . . .	191	200	186
Bihar and Orissa . . . . .	203	189	177

This table establishes just the reverse of above.

Figures for Burma are not given above as the Province has been separated in two parts in Census Report.

(Figures in Column 2 have been calculated from Table VII of Census Report, 1921, Vol. I, Part II, and those of Columns 3 and 4 have been taken from page 132 of the Census Report, 1921, Vol. I, Part I.)

## APPENDIX VIII.

## PUBERTY AGE IN INDIA.

*Statement showing age of menstruation among girls in Calcutta, prepared by Government during the discussion of the Age of Consent Bill of 1924.*

Commencement of fertility is, as a rule, indicated by the commencement of menstruation. In a few cases, however, pregnancy has occurred before the appearance of menstruation, but no case of pregnancy at an earlier age than eight to nine has been recorded. Menstruation is not a sign of bodily maturity it is in most cases merely a sign of puberty and evulation with possible pregnability or capacity to conceive.

The age at which the menstrual function becomes established varies greatly with the individual and climate. Among natives of Europe the general age at which it first appears is fourteen to fifteen. Out of 2,000 cases, menstruation appeared in 211 between the ages of ten and twelve, in 1,462 between thirteen and sixteen, and in 218 between seventeen and twenty. In one case only did it appear as early as nine, and in one only as late as twenty-two. Among natives of warm climates menstruation occurs earlier than among natives of temperate climates. Among natives of India menstruation occurs earlier than among natives of temperate climates. Among natives of India menstruation so early as ten is uncommon, but its appearance is seldom delayed beyond the fifteenth year. The menstrual flow commonly lasts three to four and a half days. The menstrual period, reckoned from commencement of flow to commencement of flow, save in exceptional cases, is twenty-eight days.

The influence of tropical climate in causing early menstruation seems to have been overestimated. In the following table are given the comparative results of observations at Calcutta in 3,189 cases amongst European, Eurasian, and Indian-born girls as to the age at which menstruation first appears. In the class of pure native Hindus and Mohammedans, but chiefly the former, the greatest percentage of dates for first menstruation occurs between the 12th and 14th years, amounting to 65·7 of the whole class, Eurasians approach the native type between the ages of 12 to 14 years, but diverge again towards the European type between 14 to 15 years of age.





## APPENDIX IX.

*Extracts from the proceedings of the Child Welfare Committee of the League of Nations (Publications of the League of Nations, Geneva iv-Social, 1927-IV-8, pages 2-5).*

## INTRODUCTION.

A compilation of the law relating to the Age of Consent and to the Age of Marriage was attempted in 1925 by the "Child Welfare Committee" for a study proposed to ascertain to what extent the age fixed for consent and for marriage may affect the question of the moral protection of children and young persons.

Information was received by it from 41 states and the conclusions were based thereon. For the sake of clarity, the subject of the Age of Consent was limited to the consideration of cases of indecent offences against a boy or girl.

*The Age of Marriage.*

The replies received showed that there were three ways in which legislation restricting the age of marriage was affected—

- (a) By fixing a minimum age not subject to exception;
- (b) By fixing a minimum age under which marriage may take place by dispensation;
- (c) By laying down an age, generally the age of majority, under which the consent of a third party to the marriage is required.

Some countries used all the three methods, others used only one, and others again used a combination of any two methods.

Under the first method, in many cases, the minimum age of marriage not subject to exception was very low and probably it bore little relation even to the lowest age at which marriage actually took place in the country.

In the case of the second method the minimum age of marriage was higher than in countries where the minimum age was subject to no exception and bore a closer relation to the lowest ages at which a certain number of marriages actually took place. The granting of dispensation was generally vested in a high officer of the State and was only exercised in exceptional cases and for urgent reasons. The most common reason for dispensation was that in which the girl was about to become a mother and in which marriage would enable the child to be born legitimate.

In the case of the third method the Committee remarked: "A provision such as this is to be found in addition to the minimum age of marriage in nearly every legislation submitted. The third party whose consent is required generally consists of the parents or guardians, but sometimes the Court is appointed *ad hoc*. The results which follow a marriage entered into without the consent of the third party vary. In a few cases the absence of such consent nullifies the marriage, in most cases the marriage is only voidable, and in some the absence of the consent required has no effect upon the validity of the marriage".

*The Age of Marriage for Men and for Women.*—The legislation submitted showed that, as a general rule, the minimum age of marriage for men was higher than for women.

## THE AGE OF CONSENT.

The replies received indicated that the Age of Consent was not absolute but was subject to qualifications, especially where it was above 15 years. It

was therefore deemed desirable, to classify the Age of Consent under three divisions:—

- (a) The Age of Consent subject to no exception;
- (b) The Age of Consent subject to special provisos or defences;
- (c) The Age of Consent in cases of special relationship.

(a) *The Age of Consent subject to no Exception* was considered to be as an age of absolute protection, under which there was no provision in the legislation for a defence on the grounds of consent, limitation of time or previous immoral conduct on the part of the complainant.

(b) *The Age of Consent subject to Special Provisos and Defences.*—The restrictions often took the form of limiting the period during which the action could be brought, or of permitting proceedings to be taken only on the initiative of the parents or guardians. Some special defences were open to the offender also. The most common defence was that he had reasonable cause to believe that the victim was over the Age of Consent.

(c) *The Age of Consent in Cases of Special Relationship.*—It was found that the Age of Consent was often raised by one or two years above that which was the general rule where the offender occupied a special relationship to or was in authority over the boy or girl against whom the offence had been committed. "This relationship may exist between people in the same house (visitors or servants and the young members of the family of either sex), or between those in authority (foster-parents, guardians, teachers, masters, doctors, clergy, etc.) and young persons who are in their custody or care under their instructions. It may also exist as regards the staff of an institution and inmates under their care."

#### THE AGE OF MARRIAGE AND OF CONSENT CONSIDERED IN RELATION TO THE MORAL PROTECTION OF THE YOUNG.

The Committee held that the considerations which influenced legislation on the age of marriage differed from those influencing legislation on the Age of Consent, and, the replies received showed that the subjects were usually dealt with in quite different codes—the marriage age under the civil code and the age of consent under the Penal Code. Both forms of legislation, however, had points of resemblance as regards the protection of young persons. First, legislation fixing the age of marriage and legislation fixing the Age of Consent both aimed at protecting young persons against their own imprudence. Secondly, in both cases, the legislation effected protection by fixing a limit of age under which young persons were legally considered to be immature or irresponsible. Thirdly, in both cases the giving of consent by a young person under the specified age did not carry with it the ordinary consequences of consent. As regards marriage, the committee said, "the consent of parties under age may make the marriage void or voidable"; and as regards the Age of Consent the committee remarked "the law declines to accept the defence that the young persons gave his or her consent, and thereby waives the general rule *volenti non fit injuria*."

On account of the serious responsibilities involved in marriage, the majority of countries took the view that the minimum age of marriage should be higher than the Age of Consent.

As regards the protection of young persons, the committee was of opinion that the essential point was not whether the minimum age of marriage be higher or lower than the Age of Consent, but rather that both ages should conform respectively to the standards required by enlightened public opinion.

## APPENDIX X-A.

*Age of Consent in 1917 in Europe, America and Colonies.*

(From "The Shield", pages 285-290, Third Series, Vol. I, No. 5, June 1917)

Published by the Association for Moral and Social Hygiene, 19, Tottenham Court Road, London, S.W. 1.

The Age of Consent is the age at which the law considers a young person to be possessed of sufficient sense and judgment not to need special protection from the law.

This limit, as one sees in going through the clauses of the codes which have been dealt with, varies from 12 to 16 years, while in the same countries the age of the legal majority is usually 21. There is thus no connection between the Age of Consent and the age of legal majority.

The Age of Consent has also no longer any connection with that at which a woman may be enrolled as a prostitute.

Name of Country.	Age of Consent. Years.	Age of legal Majority. Years.
Switzerland (Age of Consent varies in different Cantons)	12—16	20
France	13	21
Belgium	15	21
Germany	14	21
Portugal	No information at hand	21
Italy	13	21
Russia (it seems a young girl of 16 has special protection for clause 514 imprisons a man for indecent act towards a female who has attained the age of 16)	15 & 16	21
Sweden (only the punishments differ for different ages)	13 & 15	21
Spain	12	23
Austria-Hungary	14	24
Denmark	12 & 16	25
Bulgaria	13 & 16	...
Greece	15	...
Netherlands	12	...
Norway (only the punishments differ for different ages)	13 & 16	...

Name of State.	Age of Consent Years.
<i>British Dominions and Colonies—</i>	
New South Wales	17
Queensland	17
Victoria	18
South Australia	17

## APPENDIX X-A (Continued).

Name of State.	Age of Consent.
	Years.
<i>British Dominions and Colonies—contd.</i>	
Canada—	
Chaste Girl . . . . .	16
Unchaste Girl . . . . .	14
Western Australia . . . . .	17
Tasmania . . . . .	17
New Zealand . . . . .	15
South Africa . . . . .	16
<i>United States of America—</i>	
Alabama . . . . .	14
Alaska . . . . .	16
Arizona . . . . .	18
Arkansas . . . . .	16
California . . . . .	18
Colorado . . . . .	18
Connecticut . . . . .	16
Delaware . . . . .	18
District Columbia . . . . .	16
Florida—	
Chaste . . . . .	18
Unchaste . . . . .	10
Georgia . . . . .	10
Hawaii . . . . .	15
Idaho . . . . .	18
Illinois . . . . .	16
Indiana . . . . .	16
Iowa . . . . .	15
Kansas . . . . .	18
Kentucky . . . . .	16
Louisiana . . . . .	18
Maine . . . . .	16
Maryland . . . . .	16
Michigan . . . . .	16
Massachusetts . . . . .	16
Minnesota . . . . .	18
Mississippi—	
Chaste . . . . .	18
Unchaste . . . . .	12
Missouri—	
Chaste . . . . .	18
Unchaste . . . . .	14
Montana—	
Chaste . . . . .	18
Unchaste . . . . .	15

APPENDIX X-A (*Concluded*).

Name of State.	Age of Consent.
	Years.
<i>United States of America—contd.</i>	
Nebraska—	
Chaste . . . . .	18
Unchaste . . . . .	15
Nevada . . . . .	16
New Hampshire . . . . .	16
New Jersey . . . . .	16
New Mexico . . . . .	16
New York . . . . .	18
North Carolina—	
Chaste . . . . .	14
Unchaste . . . . .	10
North Dakota . . . . .	18
Ohio . . . . .	16
Oklahoma—	
Chaste . . . . .	18
Unchaste . . . . .	16
Oregon . . . . .	16
Pennsylvania—	
Chaste . . . . .	16
Rhode Island . . . . .	16
South Carolina . . . . .	14
South Dakota . . . . .	18
Tennessee—	
Chaste . . . . .	21
Unchaste . . . . .	12
Texas . . . . .	15
Utah . . . . .	18
Vermont . . . . .	16
Virginia . . . . .	15
Washington . . . . .	18
West Virginia . . . . .	14
Wisconsin . . . . .	18
Wyoming . . . . .	18

## APPENDIX X-B.

*Comparison of the minimum Age of Marriage with the Age of Consent subject to no exception in 41 States.\**

(Extracted from the Report of the "Advisory Commission for the Protection and Welfare of Children and Young People" appointed by the League of Nations. Publications of the League of Nations iv-Social, 1927-iv-8, pages 6-32.)

## WOMEN.

Age.	AGE OF MARRIAGE.		
	Minimum age subject to no exception.	Minimum age subject to exception or to dispensation.	Age of Consent.
Majority.			
20	....	....	....
19	....	....	....
18	....	Denmark, Iceland, Norway, Sweden.	....
17	....	Finland . . . .	....
16	China, Egypt, Estonia Latvia.	Danzig, Germany, Netherlands (European Territory).	Belgium, Great Britain, Iceland, Irish Free State, Netherlands (European Territory), Norway.
15	Turkey . . . .	Belgium, Dominican Republic, France, Haiti, Japan, Luxemburg, Monaco.	Finland, Greece, Haiti, Monaco, Sweden, Turkey, Venezuela.
14	Austria, Spain (Ecclesiastical marriage), Spain (Civil marriage), Salvador.	....	Austria, Danzig, Egypt, Germany, India, Latvia, Luxemburg.
13	† India (in respect of the consummation of marriage).	....	France, Japan.
12	Great Britain, Greece, Hungary, Irish Free State, Italy, New Zealand, South Africa, Uruguay, Venezuela.	....	China, Denmark, Italy, New Zealand, Salvador, Siam, Spain, Uruguay.
11	....	....	Dominican Republic.
10	....	....	Estonia.
Undefined	Siam, India (see † above).	....	....

\* Federal Governments and countries having more than one form of legislation have been omitted from this table.



# APPENDIX XI.

## Summaries of the Laws of Marriage and Age of Consent in Native States.

AGE OF CONSENT LAW.				MARRIAGE LAW.			Any agitation or resistance against the passing of the Act. Its working.
Consent.	Procedure.	Punishment.	Any agitation or resistance against the passing of the Act. Its working.	Age of Marriage.	Procedure.	Punishment.	
..	..	..	..	<p>(Child Marriage Prevention Act.)</p> <p>12 Females : 14 Males. Exceptions:—(i) Parents or guardians are not likely to live long till the girl's majority or there is no other person fit for being a guardian; (ii) parties would lose all chances of marriage; (iii) equally unavoidable difficulty. In these circumstances permission of the munsiff must be obtained beforehand and the girl must not be less than 9.</p> <p>The law is in force from 1st September 1928.</p> <p>It does not invalidate marriages performed in contravention. Registration of marriages is compulsory under the Act.</p>	Summary trial by Munsiff. No investigation by police. No prosecution after two years from the date of offence.	Fine Rs. 100 for the offence or its abetment.	No information given.
..	..	..	..	<p>(Prohibition of marriages between old men and Minor Girls Act.)</p> <p>No male of 50 or over to marry a girl below 12. In force from 1st April 1927.</p> <p>Besides the laws Civil Marriage Act and Widows Remarriage Act are in force in this State.</p> <p>15 for females, 19 for males. Exceptions:—The same as in Indore State. For taking advantage of the exceptions license from Sir Nyayadhes or Mamlatdar must be obtained and the girl must be below 13.</p> <p>The Act is in force from 1st December 1927. It does not invalidate marriages. Registration of marriages is compulsory under the Act.</p>	No prosecution after one year from the date of offence.	S. I. for 6 months or fine up to Rs. 1,000 for those who marry or cause to marry or abet the performance of marriage.	No information given.
..	..	..	..	<p>(a) 12 for Females, 16 for Males. (b) Marriage of females below 18 with males of more than double the age prohibited. (c) No unmarried girl to be married to a male above 45. Passed on 1st July 1927.</p>	<p>Trial by Sir Nyayadhesor Mamlatdar. No Police enquiry. Celebration of marriage by the subject of the State outside the State punishable on return to State.</p> <p>Trial by 1st class Magistrate. Subjects effecting marriage against rules outside the State punishable on return to the State. The Magistrate can prohibit the marriage.</p>	<p>Fine Rs. 100 for the offence or its abetment.</p> <p>Fine up to Rs. 1,000 and Imprisonment up to 6 months for the offence or its abetment.</p>	No agitation or resistance but appreciation by all. The effect has been healthy and beneficial.



## APPENDIX XII.

*Tables of Applications for exemption and offences, and, infant marriages penalised allowed and marriages after the prescribed age under the Marriage Law in Baroda State.*

Report of the Committee for examining the question of Preventing Early Marriages in the Baroda State, 1927, Appendices B. and E.

## Applications for exemption and offences.

Year.	APPLICATIONS FOR EXEMPTION.		OFFENCES AGAINST THE ACT.		Percent- age of fines more than Rs. 10.	REMARKS.
	No. of applica- tions.	Percent- age of rejections.	No. of cases.	Percent- age of conviction.		
1	2	3	4	5	6	7
1915-16 . .	60	Per cent. 31½	4,837	91.4	89	429 persons were fined from Rs. 25 to 50.
1916-17 . .	331	5.7	7,407	81.5	17.5	12 persons were fined more than Rs. 50 and 122 more than Rs. 25.
1917-18 . .	19	21	8,741	79	23.2	One person was fined more than Rs. 50 and 114 persons more than Rs. 25.
1918-19 . .	20	5	4,535	82	12	3 persons were fined more than Rs. 50 and 81 persons were fined more than Rs. 25.
1919-20 . .	27	8	10,351	83	24	16 persons were fined more than Rs. 50 and 771 were fined more than Rs. 25.
1920-21 . .	6	33	4,637	83	22	2 persons were fined more than Rs. 50 and 161 persons were fined more than Rs. 25.
1921-22 . .	237	..	8,870	85	14	
1922-23 . .	11	36.3	15,801	86	8	
1923-24 . .	7	14.3	9,108	81.8	7.3	
1924-25 . .	12	..	7,545	83.1	10.2	

*Table of Infant Marriages penalised, allowed and marriages after the prescribed age limit.*

Year.	NUMBER OF REGISTERED MARRIAGES.				REMARKS.
	Contracted after the prescribed age limit.	Exempted marriages.	Marriages penalised.	Percentage of marriages below age to total.	
1	2	3	4	5	6
1916 . . .	7,022	30	2,246	24.5	
1917 . . .	8,911	15	4,245	40	
1918 . . .	6,857	115	3,172	32.4	
1919 . . .	7,677	206	2,387	25.9	
1920 . . .	10,398	8	4,311	29.3	
1921 . . .	8,484	6	3,175	27.2	
1922-23 . . .	12,742	89	6,624	34	
1923-24 . . .	12,489	380	6,107	34	
1924-25 . . .	12,787	12	6,403	33.4	

## APPENDIX XIII.

*Summary of Laws on Registration of Marriages in British India.*

Marriages are registered only under the Indian Christian Marriage Act, 1872, The Parsi Marriages and Divorces Act, 1865, The Special Marriage Act, 1872, The Malabar Marriage Act, 1896 and the Mohammadan Marriages and Divorces Act, 1876. The relevant provisions of the Acts are summarised below:—

Community.	Act.	Extent.	Registering authority.	Penalties for not registering marriages.	Minimum age for marriage.
<i>Christian</i>	Indian Christian Marriage Act, 1872. Sections 28, 31, 9, 62 and 77; pp. 17, 18, 31 and 37.	Whole India	Clergymen and Marriage Registrars, Licensed persons in the case of Indian Christians.	Sections 66 to 76 prescribe penalties for different offences under the Act.	Girls 13, Boys 16.
		Registration is compulsory.			
<i>Parsi</i>	Parsi Marriage and Divorce Act, 1865. Sections 3, 6 and 7; pp. 563, 564.	Whole India	Priest. Certificates to be sent to Registrar.	For failure to register, simple imprisonment upto 3 months or fine upto Rs. 100 or both (Section 10).	For boys and girls 21 if without consent of guardian.
<i>Hindus, Buddhists, Sikhs and Jains and those who do not profess Christian, Jewish, Hindu Muslim, Parsi, Sikh, Buddhist or Jain religion.</i>	Special Marriage Act, 1872. Sections 2, 3 and 13, pp. 3 and 4.	Do.	Registrar of Marriages.	None.	Girls 14, Boys 13.
<i>Mohammadans</i>	Mohammadan Marriage and Divorces Act, 1876. Sections 2, 3, 6 and 7; p. 387.	Some Districts in Bengal & Assam.	Mohammadan Registrar having a license from Government.	None.	
<i>Hindus following Marumakkattayam or Allyasantana Law.</i>	The Malabar Marriage Act, 1896. Sections 3, 4, 12 and 13; pp. 776-8.	Certain Hindus in Madras Presidency.	Registrar of Marriages.	None.	
		Registration not compulsory.			

Registrars General of Births, Deaths and Marriages are appointed by the Local Governments under the Births, Deaths and Marriages Registration Act, 1886 and they are in charge of general registry offices, for keeping copies of registers of marriages. (Sections 6 and 10.)

## APPENDIX XIV.

## OPINIONS ON TEXTS.

*Quotation from the Book "The Marriage Age of Dwija Girls" (in Sanskrit), by Pandit T. V. Shrinivas Shastri, Professor of Dharma Shastra, Mylapore Sanskrit College (Madras). (Printed at the Anand Press, Madras.)*

PAGE 4.

*Text.*

विवाहक्रियाविनियुक्ता मन्त्राः अर्थतो विमृश्यमाना प्राप्तायौवनानामेव कन्यकानां विवाहं ज्ञापयन्ति । गृह्यसूत्राण्यपि विमृश्यमानानि तमेवार्थं पोषयन्ति । स्मृतयश्च काश्चन संवदन्त्यमुमर्थं पुरातन्यः । काश्चन विसंवदन्ते ऽर्वाचीनाः तत्र च स्मर्तृषु सर्वप्राचीनो मनुः । स च कन्यकानां द्वादशे वयसि तदनन्तरं वा विवाहस्य मुख्यं कालमभिप्रेति । कदाचित् वरानुरोधात् अष्टमवर्षमपि अभ्यनुजानाति । अन्ये तु स्मृतिकारा यावद्यावत्कन्यकानां विवाहकालं संकोचयन्ति, कालातिक्रमे दोषं च गुरुकुर्वन्ति, तावन्तावदर्वाचीना एव भवेयुरित्यनुमाय मन्त्रगृह्यार्थानुसारित्वात् मन्त्रमभिप्रेत एव कन्याविवाहकालः समुचितः ।

*Translation.*

The mantras recited during the ritual of marriage, if their meaning is taken into consideration, clearly indicate the marriages only of girls who have attained youth. Even the Grihya Sutras, if taken into consideration support the same interpretation. Some of the old smritis corroborate this interpretation, while some modern ones are against it. The most ancient of the Smritikars is of course Manu; and he is of opinion that the best time of marriage for girls is in the twelfth year or after that. He allows (marriages) even at times in the eighth year to get hold of a bridegroom. It may be inferred that the lower the other Smritikars bring down the age of marriage and the more they magnify the sin consequent on the transgression of the time limit, the more modern must they be. Therefore the time intended by Manu for the marriage of girls is proper, being in conformity with the meaning of the mantras and Grihya Sutras.

PAGE 8 (*Ibid.*).

*Text.*

यावद्रजोदर्शनं कन्यकानां प्रदानस्य मुख्यः कालः ततः परं यावद्वर्षत्रयं गौणः कालः, तदनन्तरं पित्रादीनां दानाधिकारो व्यपैति । कन्या तु गुणवन्तं तदभावे गुणहीनं वा सवर्णं सापिण्ड्यादि दोषरहितञ्च भर्तारं स्वयमेव दृणयात् ;

## Translation.

The best time for the gifting away of a girl is upto puberty; the period of three years after that is comparatively of less merit and after that, the right of the father, etc., to give away, ceases. Then the girl may choose her own husband, one with good qualities or in the absence of such, even without good qualities, provided that he is of the same varna (caste) and is free from the fault of consanguinity.

Quotation from the book "*Bal Vivaha Shastra Sammat Nahi*"  
(Child marriage is not in accordance with Shastras). By Mr.  
C. V. Vaidya, M.A., LL.B. (Arya Bhushan Press, Poona).

PAGE 57.

## Text.

या लेखांत येथवर जें विवेचन झालें त्यावरून मिहांत ठरतो तो येणें प्रमाणें. मुलीचा विवाह आठ वर्षांपासून करणें शक्य आहे. दहाव्या वर्षापासून ऋतुप्राप्तीपर्यंत चा काल प्रशस्त आहे. त्यांतच बारा वर्षांचा किंवा आसन्नार्तवेचा विवाह करणें उत्तम आहे. ऋतुप्राप्तीनंतर तीन वर्षेपर्यंत विवाह करण्याचा वापास अधिकार आहे. म्हणजे तीन वर्षांच्या आंत कोणी मागणारा नसेल तर त्यास दोष येत नाही. या पुढें रयास दोष आहे: सारांश, जसा उपनयनाचा काल आठव्या वर्षी उत्तम परंतु तत्पूर्वी पांचव्या वर्षापासून होऊं शकतें व नंतर सोळा वर्षेपर्यंत "ब्राह्मणस्याततोतः कालः" के त्यास दोष नाही, तसाच विवाह काल दहापासून ऋतुप्राप्तीपर्यंत प्रशस्त व पूर्वीची मर्यादा आठ व पुढाची ऋतुप्राप्तीनंतर तीन वर्षे आहे. या शास्त्रार्थांत व साधारण लोकसमजुतींत फरक आहे तो इतकाच की, साधारणतः सुद्धा लोक आठव्या वर्षी पासून दहाव्या वर्षापर्यंत विवाह प्रशस्त समजतात, व दहानंतर ऋतुप्राप्तीपर्यंत दोष नाही, परंतु विवाह गौण आहे असें मानतात, व ऋतुप्राप्तीनंतर सदैव दोष आहे, व यास प्रयच्छित आहे.

## Translation.

The proposition that is established by the argument so far is as follows. It is permissible to marry a girl from the 8th year onwards. The period between the 10th year and puberty can be recommended and more especially the time of the 12th year or the imminence of puberty is the best. The right of marrying away remain with the father for 3 years after puberty, i.e., if there is no suitor forthcoming, the father is not subject to sin (if he does not marry the girl away). He incurs sin after that period. In short just as the best time for Unanayana (thread ceremony) is the 8th year, but it is

permissible even from the 5th year onwards, and a Brahmin is not subject to sin even if it is deferred to the 16th year, as till that age the proper time for a Brahmin does not lapse; in the same manner, the time best recommended for marriage (of a girl) is from the 10th year up to puberty. The lowest limit is the 8th year and the highest limit is 3 years after puberty. The difference between this Shastric rule and the prevailing popular idea is this; people generally deem a marriage from the 8th to the 10th year to be the best; that after the 10th year up to puberty, a marriage is not attended by any sin but it is undesirable; that after puberty it is always reprehensible and must be expiated.

PAGE 58.

*Text.*

भी विवाहशास्त्राचें अवलोकन केलें, त्यांत चारपांच गोष्टी माझ्या अवलोकनांत अशा आल्या कीं.....(त्या) धर्मशास्त्राभिमानी कधींही नाकबूल करणार नाहींत.....(त्या खालीं दिल्याप्रमाणें आहेत.)

“१. हिरण्यकेशो व आपस्तंब शाखेच्या लोकांस ऋतुमतो किंवा आसन्नार्तवा मुलीचाच विवाह केला पाहिजे-त्यांच्या सूत्रावरून चातुर्थीकिर्म त्यांस केलें पाहिजे व या कर्मास बारा वर्षांपासून पुढेंच मुलीचा विवाह करणें शक्य आहे, म्हणजे शरीरभानानें व व्यावहारिक रीत्या शक्य आहे.

२. “अत ऊर्ध्वं रजस्वला” या श्लोकावरून पारिभाषिक रजस्वलात्व अकराव्या वर्षी उत्पन्न होत नाहीं. व प्रत्यक्ष ऋतुमती नसल्यास अकराव्या बाराव्या वगैरे वर्षी लग्न करण्यांत दोष नाहीं. या उलट समजून पुष्कळ असमंजस लोकांचो आहे पण तो चुकोचो आहे. व हा शास्त्रार्थ सर्व लोकांस लागू आहे.

३. ऋतुप्राप्तीनंतर तीन वर्षेपर्यंत याचमान नसल्यास माता-पितरांस दोष नाहीं. या संबंधानें भीं दिलेलें बौधायन वचन विचाराहें आहे.

४. मुलीचा विवाह ऋतुप्राप्तीनंतर केश्यां तरी केलाच पाहिजे. मात्र प्रायश्चित्त आखलायनोक्त आहे तें केलें पाहिजे. पण विधवा-विषाहासारखें प्रौढविवाहांत दुष्टत्व मुक्तीच नाहीं; म्हणजे हा विवाह कलिवर्जांत नाहीं किंवा प्रायश्चित्त केलें असल्यास पतिपत्नी पंक्तिवाध्न्य होत नाहींत व यांत जातिभ्रंश मुक्तीच होत नाहीं.”

*Translation.*

The study of the law of marriage by me has brought to light certain facts which even learned Shastris in religious law would not deny. (They are as follows):—

1. People of the Hiranyakeshi and Apastamba school must marry their daughters after puberty or just before puberty. Their Sutras enjoin Chaturthikarma on them and that is physically possible only by marrying them after 12.

2. The verse "Ata Oordhwam Rajaswala" shows that technically puberty does not come in the 11th year; and if a girl has not attained puberty, there is no sin in marrying her in the 11th or 12th year. Ignorant people have an idea opposed to this, but it is wrong; and this injunction is applicable to all people.

3. If there is no suitor forthcoming for 3 years after puberty, the parents incur no sin. The writing of Baudhayana in this connection deserves consideration.

4. A girl must be married some time after puberty. Only in that case, a Prayaschitta must be undergone as prescribed by Ashwalayana. But there is no sin in such a marriage as there is in the marriage of a widow. In short, such a marriage is not among the things that are prohibited in the Kali Age and after Prayaschitta, the husband and wife do not remain Apantaya and by no means lose caste.